TRACTS

Written by

JOHN SELDEN

OF THE

INNER-TEMPLE, Eſquire.

The Firſt Entituled,

JANI ANGLORUM FACIES ALTERA, rendred into *Engliſh*, with large Notes thereupon, by *REDMAN WESTCOT*, Gent.

The Second,

ENGLAND's EPINOMIS.

The Third,

Of the Original of ECCLESIASTICAL Juriſdictions of Teſtaments.

The Fourth,

Of the Diſpoſition or Adminiſtration of Inteſtates Goods.

The Three laſt never before Extant.

LONDON,

Printed for Thomas Baſſet at the *George* in *Fleet-ſtreet*, and Richard Chiſwell at the *Roſe* and *Crown* in S. *Paul's* Church-Yard.

M DC LXXXIII.

R: White sculpsit
JOHANNES SELDENUS Armig:

TRACTS

Written by

JOHN SELDEN

OF THE

INNER-TEMPLE, Esquire.

The First Entituled,

JANI ANGLORUM FACIES ALTERA, rendred into *English*, with large Notes thereupon, by *REDMAN WESTCOT*, Gent.

The Second,

ENGLAND's EPINOMIS.

The Third,

Of the Original of ECCLESIASTICAL Jurisdictions of Testaments.

The Fourth,

Of the Disposition or Administration of Intestates Goods.

The Three last never before Extant.

LONDON,

Printed for Thomas Basset at the *George* in *Fleet-street*, and Richard Chiswell at the *Rose* and *Crown* in S. *Paul's* Church-Yard.

M DC LXXXIII.

THE

Reverſe or Back-face

OF THE

Engliſh JANUS.

TO-WIT,

All that is met with in STORY

Concerning the

COMMON

AND

STATUTE-LAW

OF

Engliſh Britanny,

From the firſt MEMOIRS of the two NATIONS, to the Deceaſe of King *HENRY* II. ſet down and tackt together ſuccinctly by way of Narrative.

Deſigned, Devoted and Dedicated to the moſt Illuſtrious the EARL of *SALISBURY*.

Written in *Latin* by *JOHN SELDEN* of *Salvinton*, Student of the *Inner-Temple* in *LONDON*; and Rendred into *Engliſh* by *REDMAN WESTCOT*, Gent.

London, Printed for *Thomas Baſſet*, and *Richard Chiſwell*. MDC LXXXII.

461853

347.0942
J S464T

To the Right Honourable and truly Noble Lord, *Robert* Earl of *Salisbury*, Viſcount *Cranborn*, Baron *Cecil* of *Eſſenden*, Knight of the Illuſtrious Order of the Garter, Lord High Treaſurer of *England*, Maſter of the Court of Wards, and Privy Counſellor to His Moſt Excellent Majeſty, *JAMES*, King of *Great Britain*, *France* and *Ireland*, Heartily according to his high deſert, I devote and dedicate,

AND as it were with conſecrated Flowr, and crackling grain of Salt, I offer up in Sacrifice. I am not in condition to do it with a coſtly Victim, or a full Cenſer. *GREAT SIR*, deign with favour to receive theſe ſcraps of Collection; relating intirely, what they are, and as far as the preſent Age may be ſuppoſed to be concerned in ancient Stories and Cuſtomes, to the *Engliſh-Britiſh* State and Government; and ſo far forth to *Your* moſt Honoured *Name*. Which Name of Yours, whileſt I, one of the lowermoſt Bench, do with dazzled eye-ſight look upon (moſt *Noble Lord*, and great Support of your Country)

I devoutly lay down
Upon its ALTAR
This ſmall Earneſt and Pledge
of my Obedience and Duty.

THE

461853

THE TRANSLATOR'S PREFACE TO THE READER.

Reader,

THOU canſt not be ſuch a Stranger to thy own Countrey, as to need my commendation of the Learned, Worthy and Famous *AUTHOR* of theſe following Sheets; or that I ſhould tell thee, what a Scholar, a Philologer, a Humaniſt, a Linguiſt, a Lawyer, a Critick, an Antiquary, and (which proves him an abſolute Maſter of all theſe and many other Knowledges) what a Writer, the Great *SELDEN* was. Since it is liberally acknowledged by every body, that knows any thing (not only at home, but abroad alſo among Foreigners) that *Europe* ſeldom hath brought forth *His Fellow* for exquiſite Endowments of Nature, Attainments of Study, and Accompliſhments of Ingenuity, Sagacity and Induſtry. And indeed, to ſave me the labour of ſaying any more concerning this *Non-pareil* in all kinds of Learning, His own *WORKS*, which are now under

under a Review, and will e're long be made Publick in ſeveral Volumes, will ſufficiently ſpeak his Character, and be a more prevailing Argument to indear Him to thy good Opinion and firm Acquaintance, than mine or any other *Words* can.

My buſineſs now is only to give thee ſome Account of the Author's deſign in this little *Treatiſe*, and of thoſe meaſures I took in Tranſlating Him, that is, in reſtoring him to his own Native Language; though his great *Genius* had made the *Latin* and ſeveral other *Tongues*, as natural and familiar to Himſelf, as the *Engliſh* was.

To ſpeak firſt of the *Author*, I do take this Piece to have been one of his firſt Eſſays, if not the very firſt; wherein he launched into the World, and did not ſo much try the Judgement, as deſervedly gain the Approbation of the Learned: which was certainly one Reaſon, why, though the whole matter of the Book be of an *Engliſh* Complexion and Concern, yet he thought fit to put it forth in a *Latin* dreſs. That this was his firſt *Specimen*, or at leaſt one of the firſt, I gather from the time of his Writing it, *viz.* in the Six and Twentieth year of his Age; when I ſuppoſe he was not of any very long ſtanding in the *Temple*; I mean, in all likelihood, whilſt he was on this ſide the Bar. For having fraught himſelf with all kind of Learning, which the *Univerſity* could afford him (which could be, we muſt imagine, no ſmall time neither; as I may be allowed to gueſs from that paſſage of his in this Book, where he ſo affectionately recognizeth his Duty and Gratitude to his dear Mother *OXFORD*; who, if ſhe had no other *Antiquity* to boaſt of, is and ever will be Famous for This Her Scholar, our great *Antiquary*; who hath alſo ſuch a Monument to be ſeen in her publick *Library*, as will make her Glory and his Memory ever to flouriſh) I ſay, having after ſome competent time taken leave of *Academical* Inſtitutions, and being now engaged into the Study of *Law*, he thought he could not do his Profeſſion a better ſervice, than by looking back into former times, and making a faithful Collection of what might be Pertinent and Uſeful, to bring down, along through all Changes and Viciſſitudes of State, the Light and Strength, the Evidence and Reputation of old Inſtitutes and Precedents to our preſent Eſtabliſhments under our Gracious and Happy Monarchy. May It, as it is in its Conſtitution to the *Engliſh* people *Gracious*; ſo be ever in its Succeſs to It ſelf, and conſequently

ſequently to Us all, *Happy!* Here then thou wilt find the Rights of Government through all Ages, ſo far as our Hiſtories will help us; Here thou wilt ſee, from the firſt, our *KING* ſetled in his juſt Power, even in his *Eccleſiaſtical Juriſdiction* againſt the *Papal Uſurpation*; one ſhrewd Inſtance whereof is, the forbidding Appeals to the *Pope*, at ſuch a time when the *Popiſh Religion* was at its Zenith in this Iſland; that is, when People in all probability were moſt Ignorant. Here thou wilt eaſily be brought to acknowledge the Antiquity and Uſefulneſs of *Parliaments* (though under other Names till after the Conqueſt) when all the *Barons*, that is, as that Title did at firſt import, all Lords of Mannors, all Men of Eſtate aſſembled together for the determination of publick Affairs: which Uſage, becauſe it produced too numerous and cumberſome a confluence, was afterwards for better convenience retrenched into a popular Election by the Kings Writ to chuſe ſome of the Chiefeſt to act for all the reſt. And ſure enough, if we in Duty keep up the *Royal Prerogative*, and our Kings, as ever they have done, and ever, I hope, will, in Grace and Clemency oblige the *Peoples Conſent* in their Repreſentatives; we ſhall alwayes have ſuch Laws, ſuch a Government, ſuch a Correſpondence betwixt Prince and Subjects, as muſt (according to the Rules of Humane Prudence, adding our Piety to it) make this Kingdom of Great *Britanny* (maugre the malice of the Devil and his Agents whatever, *Jeſuits* or *Fanaticks*) a flouriſhing and impregnable Kingdom.

Having ſaid this in General of the Author's deſign, I ſhall not deſcend to Particulars, which I leave to thy ſelf, *Reader*, to find out, in the peruſal, that may be of good Uſe and great Conſequence to the Publick; but fearing, thou maiſt think I am ſo much taken up with the *Author*, that I have forgot *My ſelf*, I have two or three words to ſpeak of that ſorry ſubject, before I leave thee.

As to the *Tranſlator*; I confeſs, it is no great credit for any one to appear in that Figure; a Remark, which I have learn't from one, who hath tranſlated another excellent Piece of this *Noble Author*, (*Noble* I call him, ſith Nobility is rais'd by Parts and Merits, no leſs than continued by Birth and Deſcent) it was his *Mare Clauſum*, wherein he, I ſpoke of, hath acquitted himſelf very well, abating for his Villanous *Dedication* to the *RUMP-Parliament*, which was then ſetting up for a *Republick*; in which Dedication of his, he hath vilely and like himſelf (I

ſpeak

ſpeak in Charity, as to his Intereſt, I mean, not his Judgement or Conſcience at leaſt, if there were any) aſperſed the *Royal Family* with Weakneſs and Colluſion, to have lower'd the *Britiſh* Renown.

I am bid by Him, who puts this into thy hands, to tell thee, that when he was embark'd into this Employ; whatever it was, upon the coaſting of it over, he was ſurprized to find, he had undertaken ſuch a difficult and hazardous Voyage, and did preſently conclude, That none but a *Selden* (that is, a Perſon of omnifarious Reading) was fit to be a *Selden*'s Interpreter. For no other perſon, but one ſo qualified, can be Maſter of his Senſe, Maſter of his Expreſſion. His ordinary Style, where he delivers himſelf plaineſt, is as to the Matter of it, ſo full of Hiſtorical and Poetical Alluſions, and as to the Method (and hath that of Crabbed in it beſides), ſo Intricate and Perplex, that he ſeems, even where he pretends to Teach and Inſtruct, to have intended only to Amuſe and Confound the Reader. In very deed, it is ſuch a Style, as became a Learned *Antiquary*, which is to be *Antique* and Oracular; that one would think, the very Paper, he wrote upon, was made of the *Sibyll*'s old-worn Sheets, and that his meaning could not be fiſht out without the aſſiſtance of a *Delian* Diver. However the *Tranſlator* (though ſo much Inferiour to the Undertaking, as to be almoſt Unacquainted with ſome conſiderable parts of it) did preſume (whether rightly or no, muſt be left to thy judgement) that he was not utterly unfurniſhed with thoſe Skills and Helps, which might make the Work Intelligible and Acceptable even to Plebeians. For though it was at firſt deſigned by the Excellent Author in his *Latin* for ſuch as were meerly Lawyers and Scholars (they muſt be both, that mean to underſtand it as he wrote it) yet now it being done into *Engliſh*, it was to be calculated to the Meridian of common Capacities and vulgar Underſtandings. Which end he hath, he hopes, in ſome good meaſure anſwered; and in order to which end, he hath, to ſupply the defects of his *Tranſlation*, at the end of the Book ſubjoyned ſome *Annotations*, which may ſerve partly to clear the Author's meaning, and partly to vindicate himſelf in the Interpretation. He did think once to have affixt thoſe *Annotations* to the places they belong to; but upon ſecond and better thoughts, he conſider'd, that the Authors *Quotations* would be enow of themſelves to charge the *Margin* with, and a further ſuperfœ-

tation

tation would but cloy and ſurbate the Reader; though in the body of the Work, there are up and down many Explanations inſerted, to excuſe him from the trouble of having recourſe to thoſe Notes, which are added out of pure neceſſity, and not from any vanity of Oſtentation, ſince the whole, if it had its due, might ſeem to require a perpetual *Comment.* In the main, which is enough for a *Tranſlator*, be his *Author* what he will, he doth aſſure thee, that the meaneſt Subject of *England* may now read one of her greateſt Champions and Writers (for Learned Pens ſometimes do as good and as great ſervice as Valiant Swords do) ſo underſtandingly, that he may edifie and learn, what duty and deference he ought to have for the Beſt of Governments.

And now, *Reader*, excuſe me in a Digreſſion, and do not impute it as a Levity to me, that I follow my Grave Author. It is my Duty ſo to do; it is my Happineſs, if I can: He doth not deſpair, now he appears in *Engliſh*, to have *Female-Readers* too, to court him ſo far at leaſt as to peruſe his Tranſlation, who hath ſo highly courted them with Noble Careſſes in that Chapter, wherein he hath ſo learnedly pleaded the Excellencies and Rights of that *Angelical Sex*, (if Angels have any Sex) to the abaſhment and overthrow of the *Salick* Law. To what purpoſe did the *Author* write ſo much in their Commendation, if they were not to know it? which, if the poor *Tranſlator* hath any Obligations upon the Sex, he hopes they will own this as an Addition: not to mention that other Chapter of his, where, like a Gentleman and a Lawyer both, he maintains that freedom peculiar to our *Engliſh Ladies*, and which with Lawyers leave, I may call *The Courteſie of England*, in receiving of Salutes, againſt the cenſure of Rudeneſs on the one hand, and the ſuſpicion of Wantonneſs on the other. Though I muſt confeſs alſo, that ſome of his Citations in that defence, are ſo free, that I thought fit rather to leave them as I found them, than by putting them into *Engliſh*, to expoſe the Modeſty of the Sex.

I have no more to ſay, *Reader*, but to beg thy Excuſe, for any thing, wherein I may appear to have come ſhort of the Weighty and Abſtruſe Senſes of our Great and Worthy Author, and that I may detain thee no longer from his Converſation, to bid thee *Farewell.*

THE AUTHOR'S PREFACE TO THE READER.

AND *that the Tutelar or Guardian of my threſhold may not entertain thee with unlucky or ill-boding terms, he doth freely beſpeak thee* Health *and Greeting, whoever thou art,* Dear Reader. *Moreover, he is in the humour to declare both the Occaſion of drawing the firſt Furrow of this Enterprize, and alſo the Model and Frame of the whole Work, what it is, finiſhed and compleated. It is a long while ago, conſidering how young a man I am, ſince from the firſt I have made it my hearty wiſh, that the ancient Original and Procedure of our* Civil Law *might more fairly and clearly be made out; as far, I mean, as the thing will bear, and as what ſtore we have of publick Records affords aſſiſtance.*

Ἄλλοις δ' ἄλλο κραδίη ἐπαίνεται,

For ſeveral men with ſeveral things are pleas'd,

as ſaid Archilochus *of old; and I do own for my ſelf, what* Seneca *the Declaimer ſaith, that* I take pleaſure in going back to Studies of Antiquity, and in looking behind me to our Grand-ſires better times. *Which, to ſay truth, they who do too much, ſlight,* Senec. controv.

Lucret. l. 1. Ardua dum metuunt, amittunt vera viai.

that is,

While lofty paſſes they do fear, through doubt,
They loſe the certain tracks and paths of truth.

And, ſo may the Muſes alway favour me, they are ſuch things as are

Enn. Annal. l. 7.

——— Anteiqua, ſepolta, vetuſta,
Quai faciunt mores veteréſque novoſque tenentem
Moltarum veterum Legum, Divômque Hominumque
Prudentem.———

as ſaith another old Latin *Poet; that is, ſuch ſtories as are*

Antique, buried in rubbiſh, old and muſty,
Which make one verſt in cuſtoms old and new,
And of Laws, Gods and Men giving a view,
Render the careful Student skill'd and truſty.

Some ſpare hours have been ſpent by me in reading over Hiſtorians, Chronologers, Antiquaries, *Foreigners and our own Countrey-men, thoſe of Ancient date and the more polite of the Modern ſort: thoſe eſpecially who ſeem'd to make out the quickeſt courſe to that Goal and deſign I ſpoke of. I have carefully cull'd out whatſoever I met with, that lookt like the Orders and Deciſions of* Prætors *or Lord Chief Juſtices, and whatſoever concerns the* Civil *or* Prophane Law. (Prophane *I call that, which is not held by the Religion of the Church; as* Sextus Pompeius *hath taught me.*) *I did judge that there were a great many things in thoſe Writers worth the knowing, and which might deſerve to be digeſted into a kind of Volume according to order of Chronology, I did in the firſt place adviſe, and took that ſpecial order with my ſelf, that as to this undertaking, I might with the greater eaſe have my Attendants ready at hand to wait upon my Studies. I went about to give ſome cloſure and cement, ſuch as it is,* (i. e. *ſome method and connexion*) *to the ſcattered and disjointed bulk, and I brought it to a concluſion; and aſſoon as it came into my mind to publiſh it, I endeavoured according to that meanneſs, which it appears in, to finiſh it* (*that I may make uſe of a Mathematick term*) *with its Complement. I have ſet the model and frame upon a ſure account* (*not upon mine*

own

own credit neither, who am too apt to take on truſt things ſuſpected) and in a compendious way: *I have writ my ſelf compendiouſly and ſuccinctly; I have tranſcribed out of others* faithfully. *I do on ſet purpoſe vouch the credit, I go upon, to be none of mine, but the Authors, I have taken out of, that I may not be accuſed of falſe dealing by unskilful or careleſs Readers. I have applyed my ſelf not only to the meaning of the Writers, or to their hiſtorical account, but even to the very words and ſyllables, which they ſpoke, and have inſerted them printed in a different character; thoſe, I confeſs, unleſs it be from them of the middle age, many times ſufficiently barbarous, that miſerably want poliſhing, ſuch as Criticks cannot away with, and do very well agree with the Records and Reports of Law, which we converſe with. However I would not have thee diſdain in the mean time brimful and wholſome draughts of liquor, becauſe the Bowl was not made in a Potters ſhop of* Colias *a place in* Athens, *or in cold Winter to ſlight a garment which is not made of* Attick *Wooll; as* Plutarch *hath admoniſhed the hearers of Philoſophy. Let young Ladies ſpeak finically with their golden Flower-amours, and let them, who have ſtore and leave at once, court the graces of words and beauties of expreſſion. 'Tis true, the care of exact ſpeaking, is a thing befits the* Muſes, *yet how the moſt abſtruſe Myſteries even of the higheſt* Urania, *of Divinity it ſelf, are laid open without it, the* Thomiſts, *the* Scotiſts, *and what other Sects and Parties of School-men there are, know well enough. And there are ſome others alſo, that think they know; I mean the inquirers into Heavenly Calculations (* Aſtrologers *) and the Weather-wiſe-men (* Almanack-makers *) who in good deed for the moſt part rely too much upon the trifling ſtories of their Maſters. Now they, and not without good reaſon, have preferred the* Arab *Writers barbarouſly tranſlated, and ſlovenly* Bonatus *before* Julius Firmicus *and modern* Pontanus, *as ſpruce as they are. Theſe two may rather be termed Grammarians, than Aſtrologers. Nor do* Ariſtotle's *crabbed Lectures of natural Philoſophy diſcourage Interpreters or procure to themſelves any diſcredit, by reaſon of the affected obſcurity of ſpeech, they are delivered in: and as to neatneſs of Poetry,* Apollo *himſelf hath been out-done by* Sappho, Homer, Heſiod. *Though the Matter doth often ſurpaſs the Workmanſhip; yet who is there is ſo rigid or ſo fond a Cenſurer, as to diſparage and debaſe the Matter upon the account of the Workmanſhip? Which I would not have be ſaid only of thoſe paſſages, which I have brought into this Piece out of thoſe fore-mentioned Authors, but alſo of the whole Body of our Common-Law. I have, I hope, not unluckily begun with the very firſt Inhabitants of this Iſle, as far as we can come to the knowledge of them. Thoſe Authors, whom I have followed in the*

Plutar. de audiendo.

Plutar. lib. orac. Pyth.

original

original of Story, I have, as it was meet, ſet down and remark'd, adding the Judgement and Cenſure of the Learned. Afterward, beſides Cæſar and Tacitus there are but few that afford us any help, and that but in few things too. For the name of Brittany was known but of late to the Greeks, but of late to the Romans; and the Britans were truly for a long while divided from all the world beſides. But among Foreigners the latter Ages have enquired after them. I ſpeak of Strabo, Pliny, Ptolomy, others; and a certain Writer of Aſia, Marcianus Heracleotes, not y t, that I know of, turned into Latin, ſaith thus, Albion **the Britiſh Iſle hath in it Thirty Three Nations, Fifty Nine remarkable Cities**; and then he ſubjoyns other things concerning the number of Rivers, Promontories, Havens and Creeks or Bays. I have ſtretched out this Piece to the death of King Henry the Son of Mawd the Empreſs by Jeoffrey the Count of Angers in France. In whoſe time, or near thereabout, are the firſt beginnings of our Law, as our Lawyers now account. There come in by the way Richard called Cœur de Lion and King John; but there is ſcarce any thing in that interim to our purpoſe. I have on purpoſe paſſed by Mr. Lambard's Archæonomia (or Antiquites of Law) without medling with it at all, only when ſome obvious occaſion did ſometimes ſuggeſt it for the explaining of what is ſet down by us. I have divided the whole into two Books; the firſt cloſes with the Saxons; the ſecond begins with the Norman Conqueſt, the moſt famous Æra or Date of the Engliſh Government in the reckonings of time.

Marcian. Heracleot. ἐν ἐπιτομῇ.

But however to refer the original of our Engliſh Laws to that Conqueſt (as ſome make bold to do) is a huge miſtake; foraſmuch as they are of a far more ancient Date. For it is a remark amongſt Stateſmen, That new acquired Empires, do run ſome hazard by attempting to make new Laws: and the Norman did warily provide againſt this danger, by beſtowing upon the yielding conquered Nation the requital of their ancient Law: a requital, I ſay, but more, as it ſhould ſeem, for ſhew than uſe; and rather to curry favour with the people at the preſent, than in good deed for the advantage of the Engliſh Name. Wherein he in ſome meaſure followed well near the practice of Alaricus, who having conquered the Romans, and finding that they took it in dudgeon to be bound up by the Laws of the Goths, though in other things they were compliant enough, reſtored to them the Roman Laws, but by ſly interpretations againſt the ſenſe and meaning of the Roman Laws he drew theſe Laws back again to the Gothiſh. For the times on this ſide the Normans entrance, are ſo full of new Laws, eſpecially ſuch as belong to the right of Tenancy or Vaſſalage; though other Laws have been carefully enough kept up from the time of the Saxons,

Philip. Honor. Theſ. politic. Lat. & Ital. Machiavell in Principe & comment. ad Liv. l. 1. c. 25. & 26. Cujacius. Alber. Gentil. l. 3. c. 11. de jure bell.

Saxons, *and perhaps from an earlier date. For neither did the gliding Decrees of that Blazing-Star, which appeared in the* Eaſter *of that year, ſo well known for this Victory, prognoſticate, as the change of the Kingdom (a thing which Aſtrologers affirm) ſo the abolition of our Laws; and yet in ſome ſenſe peradventure an alteration of them both; at that rate, I mean, as* Jerom Cardan *writes, that the Comet in the year 1533. which appeared in* Aries *(to which Sign, our Iſland according to* Ptolomies *doctrine is lyable) under the North ſide of the Milky Way, being of a Jovial, Martial and Mercurial force and efficacy, was the fore-teller or fore-runner of the change of Religion; which happened three years after in* Henry *the Eighth's time. But whatever may be thought in other caſes, Chriſtianity is exempt from the Laws and over-ruling power of the Stars, and I do but too well perceive, that* Cardan's *piety is wanting in this and in other inſtances, and particularly in caſting our Saviours Nativity. And why do I too much beſides my purpoſe, trouble my ſelf about theſe things here? Go thy wayes to our* Janus, *(for thou canſt hardly chuſe but own him having two faces) where to ſpeak of our* Engliſh Britiſh *Law ('tis no Treaſon I trow ſo to call it)*

H. Cardan. in Ptolem. l. 2. judic. aſtron. text. 54.

Nobilitas nec origo latet, ſed luce ſequente
Vincitur.——

Stat. 1. Silv.

That is,

**Its noble riſe doth not lye hid, but light
Attending makes it far more clear and bright.**

For,

Si nobilitas cunctis exordia pandit
Laudibus, atque omnes redeunt in ſemina cauſæ.

Claudian. in laud. Serenæ uxor. Stilic.

That is,

**If nobleneſs doth firſt commence all praiſe,
And all things from their ſeeds do themſelves raiſe.**

However it does not at all boaſt of its Romulus's, *its* Numa's, *its* Decemviri, *its* 2000. *Books, its* 4000. *and* 4000. *and* 4000. *Verſes, and the like; which having been digeſted long ſince (as it were*

L. 2. Sect. 2. omnia. C. de vet. jur. enucl.

——non

Virg. Æn. 1. ——non hos quæſitum munus in uſus,

That is,

A boon not purchas'd for ſuch uſe as this)

do far and near bear ſway in Courts of Law throughout all Europe; *yet is not the riſe and original of our Laws alſo leſs to be regarded; nor is it perchance for diſtance of time further from* Iapetus *than they. But go thy wayes, I ſay, and ſee that thou doſt not undertake without reaſon and good advice, to fit any thing to the preſent Age, otherwiſe than the changes, the repeals and cancelling parts of Laws, and new emergencies and viciſſitudes of affairs, which were frequent, will give thee leave. Remember* Lucretius *in this caſe alike as in others.*

Lucret. l. 5. de rer. nat.

Quod fuit in pretio, fit nullo denique honore;
Porrò aliud ſuccedit, & è contemtibus exit,
Inq; dies magis appetitur, floretque repertum
Laudibus, & miro'ſt mortaleis inter honore.

That is,

What was in price, at laſt hath no eſteem;
Whilſt ſomewhat elſe ſtarts up and gains repute,
And every day grows more in vogue and mute,
And mortals ſtrangely do it highly deem.

According to what that other, and the greateſt Philoſopher among the Poets ſaith,

Virg. l. 11. Æneid.

Multa dies, variuſque labor mutabilis ævi
Rettulit in melius.——

That is,

Time and the various toyl of changing age
Many things betters, and reforms the Stage.

And

And the Greek *ſentence,*

Καιρὸς γὰρ ἐξ τῶν νόμων κρεῖττων πολύ.

For time to Laws themſelves gives Law full oft.

without a world of rubs in the way and ſlips or diſtances of years, I ſaw I was not able to put upon the work the face of a Hiſtory, and to muſter up all things that are wanting. Very many things are ſo effaced by injury of time, ſeveral things have been loſt through neglect, nor is the Learned World under a ſmall diſcontent, or at ſmall variance by reaſon of this loſs. Theſe remains, which are left us, to be handled upon occaſion, I have alwayes accounted pleaſant reſearches: I, and perhaps one may ſay, that thoſe Learned Pieces, which Pomponius, Rivallius, Zaſius, Oldendorp, Briſſonius, *and others, have publiſhed concerning the Twelve Tables, and the Laws written upon Oaken Planks, upon Elephants Skins, and in former Ages upon Braſs, are not of more uſe and advantage for the City* Spire *in* Germany, *than theſe Collections may be for* Weſtminſter-Hall *amongſt us. We have ſaid enough and to ſpare, concerning the model and frame of the Work. For me now to beg the Readers pardon, that I may ſpeak a little concerning my ſelf, ſeeing it was at my own choice, whether I would give him trouble or no, would be ſilly. If ſo be that any one ſhall ſhew himſelf more buſie or pragmatical in theſe Writings of mine, than becomes him;*

Τὰ χωΐεια μεγὰν τοῖς ἀνδρὸς πεάγμασιν, Ariſtoph. in ἀν.

Not knowing (as we ſay) **a Pig from a Dog.**

I would not have him ignorant, that I value it no more than a ruſh, to be laſhed with the flouts of prattle-boxes or tittle-tattlers, and ſuch creatures as carry the Goddeſs Nemeſis *on pickpack. Nor does any one that is in his wits, when an Aſs kicks and flings at him to little or no purpoſe, regard an idle oafiſh affront ſo as to requite it. I paint upon my weather-boards* Averrunca, *i. e. God forefend, (as they did of old* Arſe verſe *upon houſes, to preſerve them from fire.) May* Intercedona, Pilumnus, *and* Deverra, *drive away* Silvanus, *and keep him off from doing this tender Infant any harm. Well: let Aſſes and ſilly Animals commend, find fault, tune their pipes, how they will:*

let the envious and ill natured with their ſneerings, prate and talk; let ſnotty noſed Fellows and Clowns, that feed upon cockle bread, approv what I write, or let them flout and ſleer, or let them play Jack of both ſides; it's all fiddle faddle to me, nor would I put a ſtraw between.

Hegeſand. Delphus ap. Athen. dipnoſ. 4.

Οφρυδιαστασιδαι, μυκτηρα πξιγμενοι,
Σακκογενειοπερφοι.

Brow-benders, making Noſe and Chin to meet,
With dangling Beards like ſacks down to your feet.

Ye rigid Cato's *and ſevere* Criticks, *do ye take in good part, what I have done; nor let me be altogether ſlighted, if by chance ye ſhall vouchſafe to look this way, nor with your skew looks fore-ſpeak my harveſt in the blade. I ſhall readily and willingly yield the conqueſt to him that fairly gets it, and rightfully corrects me. But whoever thou art of that ſort of men,*

Horat. Carm. 3. Od. 18.

Per meos fines & aprica rura
Lenis incedas, abeaſque parvis
Æquus alumnis.

O'er my bounds and ſunny plain
Take a gentle walk or twain;
Then depart with friendly mind,
To me and my Lambkins kind.

Plin. epiſt. ad Nat. Hiſt.

You, that are candid and courteous, know, that 'tis a very hard matter to brighten things that are grown out of uſe, to furniſh things obſcure with light, to ſet off things that are diſdained, with credit, to make things doubtful paſs for probable, to aſſign to every thing its own nature, and every thing to its own nature; and that it is a very brave and gallant thing, *as he ſayes,* for thoſe that have not attained their deſign, yet to have endeavoured it; *when the Will* (as we ſay) *is accepted for the Deed. But I know too, that every* Cone *or point of viſion in the* Opticks *differs from a right angle; and I know how odious a thing a Train or ſolemn Proceſſion is in the publick Games. Therefore,* dear Reader,

Senec. præf. ad controver.

Reader, *I bid thee heartily farewel; and with a fortunate endeavour, fetch out hence, what may make for thy turn. Why do I delay all this while to let thee in? Ἀλλ' ἴθι χαίρων. Go thy wayes in, o' Gods name.*

Laudamus veteres, ſed noſtris utimur annis: Ovid. Faſt. 1.
Mos tamen eſt æque dignus uterque coli.

We praiſe old times, but make uſe of our own;
And yet 'tis fit they both alike be known.

Go in and welcome heartily; and be not unkind to thy Entertainer.

From the *Inner Temple London,*
Decemb. 25. 1610.

Τῆς ἀρχαιολογίας ἐρευνητῆρι φιλοπονωτάτῳ, καὶ τῷ τῆς Θέμιδος Θιασώτῃ θαυμασοτάτῳ Ἰωάννῃ τῷ Σιλοθύνῳ φιλτάτῳ.

Τῆς νομικῆς φιλέω τρεῖς ἀστέρας, ἕνεκα μοῦνοι
Συμπάντων νομικῶν εἰσὶν ἀρειότεροι.
Σεῖο πίνυς φιλέω Σιλόθυνε, Μάγνησσαν ἔρεισμα
Ευρυμίης φιλέω, καὶ σὲ Βάκχυνε φιλῶ
Ἐν σελίδεσι νόμων ἄνδρα πολύφρονα, ἀκαμβῶν
Αντ' ἀναπτυξαμένους ὠγυγίων τε νόον.

ΑΡΚΤΟΥΡ. ὁ ΛΩΣΓΟΣ.

In

In laudem digniſsimi Authoris, & politioris literaturæ candidati, Carmen.

CUm Jovis effœti Pallas foret orta cerebro,
Vagitus teneros virgo patrima dedit.
Accurrit, tacitéque novam ſubducere prolem
Tentat, & abſtruſis abdere Juno locis.
Jupiter ingenuam ſolerti indagine natam
Quæritat, & celeri permeat aſtra pede;
Stat, cerebrique tuam cernens, *Seldene*, Minervam
In natæ amplexus irruit ille tuæ.
Atque ſuam credit; parilique ab imagine formæ
Illa fuit ſuavis, ſuavis & illa fuit.
Liſque foret, niſi quæ quondam Lucina fuiſſet,
Muſarum teſtis turba novena fuit.
Quam cognata Jovis tua caſta Minerva Minervæ eſt,
Cum tantum fallax luſit imago Deum?

ALIUD.

DUm tuus ambiguâ *Janus*, facieque biformi
Reſpicit antiqua, & poſteriora videt:
Archivos Themidis canos, monumentaque legum
Vindicat à veteri ſemi-ſopita ſitu.
Hinc duplex te *Jane* manet veterane corona,
Gratia canitie, poſteritate decus.

Gulielmus Bakerus Oxon.

ASTRÆÆ BRIT.

ULtima cælicolûm terras Aſtræa reliquit.
Tu tamen alma redi & terras Aſtræa reviſe :
Aſtræa alma redi tuis Britannis :
Et diva alma fave tuis Britannis :
Et diva alma fove tuos Britannos :
Et diva alma regas tuos Britannos :
Cantemus tibi ſic tui Britanni :
Fœlices nimium ô tui Britanni :
Tu tandem alma redis divum poſtrema Britannis :
Ultima cœlicolûm terras Aſtræa reviſit.

Alma redi. ſacro redolent altaria fumo
Et tibi ſacratis ignibus. *Alma redi.*
Alma redi. poſuit Liber hic primordia juris
Anglos quo poteris tu regere. *Alma redi.*
Alma redi. tibi templa ſtruit *Seldenus* : at aram
Qui tibi nil potuit ſanctius. *Alma redi.*

E. Heyward.

In Epigraphen Libri Carmen.

QUiſnam Iò muſſat ? Poſuiſti Enyo
Arma ; jam doctos Iber haùt Batavos
Marte turbat ; Fœdere jam *Britannus*
Continet Orbem.
Cluſium Audax quis reſerat latentem ?
Falleris. Diæ *Themidis* recludo
Intima. Hæc portâ meliùs feratâ
Pandit *Eanus.*

I. S.

THE

THE CONTENTS OF THE CHAPTERS.

BOOK I.

CHAP. I.

THE *counterfeit* Berosus *with the Monk that put him forth, both censured. The Story of* Samothes *the first* Celtick *King. The bounds of* Celtica. *From* Samothes, *say they, the* Britans *and* Gauls *were called* Samothei. *For which* Diogenes Laertius *is falsly quoted; the word in him, being* Semnothei, page 1.

CHAP. II.

An Account of the Semnothei. *Why so called; the opinion of* H. Stephen, *and of the Author. Old Heroes and Philosophers went by the names of Demy-gods. The* Σεμναὶ θεαὶ *or* Venerable Goddesses, *the same as* Eumenides, *dispensers of Justice. And by* Plutarch *and* Orpheus *they are set for Civil Magistrates. Judges in Scripture so called* Elohim, i. e. *Gods. These* Semnai theai *the same as* Deæ Matres *in an old British Inscription,* p. 3

CHAP. III.

One Law of Samothes *out of* Basingstoke *concerning the reckoning of Time by Nights.* Bodinus *his censure of Astrologers for otherwise computing their Planetary Hours. A brief account of some of*

of Samothes *his Succeſſors*, Magus, Sarron, Druis, *from whom the* Druids, *&c.* p. 5

CHAP. IV.

K. Phranicus 900. *Years after* Samothes *being to reſide in* Pannonia, *intruſts the* Druids *with the Government. In the mean time* Brutus, Æneas *his Grand-ſon, arrives and is crowned King by the* Britans, *and builds* Trojanovant, *i. e.* London. Dunvallo Molmutius 600. *years after is King, and makes Laws concerning Sanctuaries, Roads or High-wayes and Plow-lands.* K. Belin *his Son confirms thoſe Laws, and caſts up four great Cauſe-wayes through the Iſland. A further account of* Molmutius. p. 6

CHAP. V.

A brief Account of Q. Regent Martia, *and of* Werchenlage, *whether ſo called from her, or from the* Mercians. Annius *again cenſured for a Forger, and his* Beroſus *for a Fabulous Writer,* p. 7

CHAP. VI.

The ſtory of Brutus *canvaſt and taken to be a Poetick Fiction of the Bards.* Jeoffry *of* Monmouth's *credit called in queſtion. Antiquaries at a loſs in their judgements of theſe frivolous ſtories,* p. 8

CHAP. VII.

What the Trojan *Laws were, which* Brutus *brought in. That concerning the Eldeſt Sons Inheriting the whole Eſtate, confuted. In the firſt times there were no Poſitive Laws; yet mention made of them in ſome very ancient Authors, notwithſtanding a remark of ſome ancient Writers to the contrary,* p. 10

CHAP. VIII.

An Account of the DRUIDS *out of* Cæſar's *Commentaries, whence they were ſo called. Their determining in point of Law, and paſſing Sentence in caſe of Crime. Their Award binds all parties. Their way of Excommunicating or Outlawing. They have a Chief over them. How he is choſen. Their Priviledge and Immunity,* p. 12

CHAP. IX.

The wenage of their Schools without Writing. On other occaſions they might uſe the Greek *Letters, as* Cæſar *ſaith, yet not have the language. The* Greek *Letters then were others than what they are now. Theſe borrowed from the* Gauls, *as thoſe from the* Phœnicians. Ceregy-Druidon, *or the* Druids Stones *in* Wales. *This Place of* Cæſar's *ſuſpected.* Lipſius *his Judgement of the whole Book,* p. 13

CHAP.

CHAP. X.

The Druids *reckoning of time.* *An Age conſiſts of thirty Years.* *What Authors treat of the* Druids. *Their Doctrines and Cuſtoms ſavour of* Pythagoras *and the* Cabbaliſts. *They were the eldeſt Philoſophers and Lawyers among the* Gentiles. *Some odd Images of theirs in Stone, in an Abby near* Voitland, *deſcribed,* p. 15

CHAP. XI.

The Britans *and* Gauls *had Laws and Cuſtoms much alike, and whence that came.* *Some things common to them both, ſet down; in relation to the breeding of their Children, the Marrying of their Wives, the Governing of their Families, burning Women that killed their Husbands, and burning ſome Servants with the dead Maſter for company.* *Together with ſome Remarks of their publick Government,* p. 16

CHAP. XII.

Women admitted to publick debates. *A large commendation of the Sex, together with a vindication of their fitneſs to govern; againſt the* Salick *Law, made out by ſeveral examples of moſt Nations,* p. 18

CHAP. XIII.

Their putting themſelves under protection by going into great mens ſervice. *Their Coins of money, and their weighing of it.* *Some ſorts of fleſh not lawful to be eaten by them,* p. 21

CHAP. XIV.

Community of Wives among the Britans, *uſed formerly by other Nations alſo.* Chalcondylas *his miſtake from our Civil Cuſtom of Saluting.* *A rebuke of the fooliſh humour of Jealouſie,* p. 22

CHAP. XV.

An account of the Britiſh *State under the* Romans. Claudius *wins a Battel, and returns to* Rome *in Triumph, and leaves* A. Plautius *to order affairs.* *A Colony is ſent to* Maldon *in* Eſſex, *and to ſeveral other places.* *The nature of theſe Colonies out of* Lipſius. Julius Agricola's *Government here in* Veſpaſian's *time,* p. 24

CHAP. XVI.

In Commodus *his time King* Lucy *embraces the Chriſtian Religion, and deſires* Eleutherius *then Pope, to ſend him the* Roman *Laws.* *In ſtead of Heathen Prieſts, he makes three Arch-Biſhops and twenty eight Biſhops.* *He endows the Churches, and makes them Sanctuaries.* *The manner of Government in* Conſtantine's *time, where ends the* Roman *account.* p. 27

CHAP. XVII.

The Saxons *are ſent for in by* Vortigern *againſt the* Scots *and* Picts, *who*

who uſurping the Government, ſet up the Heptarchy. The Angles, Jutes, Friſons, *all called* Saxons. *An account of them and their Laws, taken out of* Adam *of* Bremen, p. 29

CHAP. XVIII.

The Saxons *diviſion of their people into four ranks. No perſon to marry out of his own rank. What proportion to be obſerved in Marriages according to Policy.* Like to like *the old Rule. Now Matrimony is made a matter of money,* p. 30

CHAP. XIX.

The Saxons *way of judging the Event of War with an Enemy. Their manner of approving a propoſal in Council, by clattering their Arms. The Original of* **Hundred-Courts**. *Their dubbing their Youth into Men. The priviledge of young Lads Nobly born. The* **Morganheb** *or Wedding-dowry,* p. 32

CHAP. XX.

Their ſevere puniſhments of Adultery, by maiming ſome parts of the body. The reaſon of it given by Bracton. *The like practiſed by* Danes *and* Normans, p. 33

CHAP. XXI.

The manner of Inheriting among them. Of deadly Feuds. Of **Weregild** *or Head-money for Murder. The Nature of Country-Tenures and Knights Fees,* p. 36

CHAP. XXII.

Since the return of Chriſtianity into the Iſland. King Ethelbert's *Law againſt Sacriledge. Thieves formerly amerced in Cattel. A blot upon* Theodred *the Good, Biſhop of* London, *for hanging Thieves. The Country called* **Engelond** *by Order of King* Egbert, *and why ſo called. The Laws of King* Ina, Alfred, Ethelred, *&c. are ſtill to be met with in* Saxon. *Thoſe of* Edward *the Confeſſor, and King* Knute *the* Dane, *were put forth by Mr.* Lambard *in his* Archæonomia, p. 37

CHAP. XXIII.

King Alfred *divides* England *into Counties or Shires, and into Hundreds and Tythings. The Original of* Decenna *or* **Court-leet, Friburg**, *and* **Mainpaſt**. *Forms of Law, how People were to anſwer for thoſe whom they had in* **Borgh** *or* Mainpaſt, p. 39

CHAP. XXIV.

King Alfred *firſt appointed Sheriffs. By* Duns Scotus *his advice, he gave Order for the breeding up of Youth in Learning. By the way, what a* **Hide** *of Land is. King* Edgar's *Law for Drinking. Prelates inveſtiture by the Kings Ring and Staff. King* Knute's

Knute's *Law againſt any Engliſh-man that ſhould kill a* Dane. *Hence* **Engleſcyre**. *The manner of Subſcribing and Sealing till* Edward the Confeſſor's *time. King* Harold's *Law, that no Welch-man ſhould come on this ſide* Offa's *Dike with a Weapon,* p. 41

CHAP. XXV.

The Royal Conſorts great Priviledge of Granting. Felons Eſtates forfeited to the King. Eſtates granted by the King with three Exceptions of Expedition, Bridge, and Caſtle. The Ceremony of the Kings preſenting a Turf at the Altar of that Church, to which he gave Land. Such a Grant of King Ethelbald *comprized in old Verſe,* p. 43

THE CONTETNS.

BOOK II.

CHAP. I.

William *the Conquerour's Title. He beſtows Lands upon his followers, and brings Biſhops and Abbots under Military ſervice. An account of the old Engliſh Laws, called* **Werchen-lage, Danelage,** *and* **Weſtſaxen-lage.** *He is prevailed upon by the Barons, to govern according to* King Edward's *Laws, and at* S. Albans *takes his Oath ſo to do. Yet ſome new Laws were added to thoſe old ones,* p. 47

CHAP. II.

The whole Country inrolled in Dooms-day Book. *Why that Book ſo called.* Robert *of* Gloceſter's *Verſes to prove it. The Original of Charters and Seals from the* Normans, *practiſed of old among the* French. *Who among the* Romans *had the priviledge of uſing Rings to ſeal with, and who not,* p. 51

CHAP. III.

Other wayes of granting and conveying Eſtates, by a Sword, &c. particularly by a Horn. Godwin's *trick to get* Boſeham *of the Arch-Biſhop of* Canterbury. *Pleadings in* French. *The* French *Language and Hand when came in faſhion. Coverfeu. Laws againſt taking of Deer, againſt Murder, againſt Rape,* p. 54

CHAP. IV.

Sheriffs and Juries were before this time. The four Terms. Judges to act without appeal. Juſtices of Peace. The Kings payments made at firſt in Proviſions. Afterwards changed into Mony, which the Sheriff of each County was to pay in to the Exchequer. The Conſtable of Dover *and Warder of the* Cinque Ports *why made. A diſorder in Church-affairs Reformed,* p. 56

CHAP.

CHAP. V.

William Rufus *ſucceeds.* Annats *now paid to the King. Why claimed by the Pope. No one to go out of the Land without leave. Hunting of Deer made Felony.* p. 59

CHAP. VI.

Henry *the Firſt why called* Beauclerk. *His Letters of Repeal. An Order for the Relief of Lands. What a* Hereot *was. Of the Marriage of the Kings Homagers Daughter,* &c. *Of an Orphans Marriage. Of the Widows Dowry. Of other Homagers the like. Coynage-money remitted. Of the diſpoſal of Eſtates: The Goods of thoſe that dye Inteſtate, now and long ſince, in the Churches Juriſdiction; as alſo the buſineſs of Wills. Of Forfeitures. Of Miſdemeanors. Of Foreſts. Of the* Fee de Haubert. *King* Edward's *Law reſtored,* p. 60

CHAP. VII.

His order for the reſtraint of his Courtiers. What the puniſhment of Theft. Coyners to loſe their Hands and Privy members. Guelding a kind of death. What Half-pence and Farthings to paſs. The right meaſure of the Eln. The Kings price ſet for proviſions, p. 63

CHAP. VIII.

The Regality claim'd by the Pope, but within a while reſumed by the King. The Coverfeu *diſpenſed with. A Subſidy for marrying the Kings daughter. The* Courteſie of England. *Concerning Shipwrack. A Tax levied to raiſe and carry on a War,* p. 65

CHAP. IX.

In King Stephen's *Reign all was to pieces. Abundance of Caſtles built. Of the priviledge of Coining. Appeals to the Court of* Rome *now ſet on foot. The* Roman *Laws brought in, but diſowned. An inſtance in the* Wonder-working Parliament, p. 67

CHAP. X.

In King Henry *the Seconds time, the Caſtles demoliſhed. A Parliament held at* Clarendon. *Of the Advowſon and Preſentation of Churches. Eſtates not to be given to Monaſteries without the Kings leave. Clergymen to anſwer in the Kings Court. A Clergyman convict, out of the Churches Protection. None to go out of the Realm, without the Kings leave. This Repealed by King* John. *Excommunicate Perſons to find Surety. Laymen how to be impleaded in the Eccleſiaſtical Court. A Lay-Jury to ſwear there, in what caſe. No Homager or Officer of the Kings to be Excommunicated, till He or his Juſtice be acquainted,* p. 69

CHAP.

CHAP. XI.

Other Laws of Church affairs. Concerning Appeals. A Suit betwixt a Clergy-man and a Lay-man, where to be tryed. In what case one, who relates to the King, may be put under an Interdict. The difference betwixt that and Excommunication. Bishops to be present at the Tryals of Criminals, until Sentence of Death, &c. pass. Profits of vacant Bishopricks, &c. belong to the King. The next Bishop to be chosen in the Kings Chappel, and to do Homage before Consecration. Deforcements to the Bishop, to be righted by the King. And on the contrary, Chattels forfeit to the King, not to be detained by the Church. Pleas of debts whatsoever in the Kings Court. Yeomens Sons not to go into Orders without the Lords leave, p. 72

CHAP. XII.

The Statutes of Clarendon *misreported in* Matthew Paris, *amended in* Quadrilegus. *These Laws occasioned a Quarrel between the King and* Thomas a Becket. *Witness* Robert *of* Gloceſter, *whom he calls* Yumen. *The same as* Rusticks, *i. e.* Villains. *Why a Bishop of* Dublin *called* Scotch-Villein. *Villanage before the* Normans *time,* p. 74

CHAP. XIII.

The Poet gives account which of those Laws were granted by Thomas a Becket, *which withstood.* Leudemen *signifies Lay-men, and more generally all illiterate Persons,* p. 77

CHAP. XIV.

The Pope absolves Thomas a Becket *from his Oath, and damns the Laws of* Clarendon. *The King resents it, writes to his Sheriffs, Orders a Seisure. Penalties inflicted on Kindred. He provides against an Interdict from* Rome. *He summons the Bishops of* London *and* Norwich. *An account of* Peter Pence, p. 79

CHAP. XV.

A Parliament at Northampton. *Six Circuits ordered. A List of the then Justices. The Jury to be of twelve Knights. Several sorts of Knights. In what cases Honorary Knights to serve in Juries. Those who come to Parliament by right of Peerage, sit as Barons. Those who come by Letters of Summons, are styled* Chevaliers, p. 81

CHAP. XVI.

The person convict by Ordeal, *to quit the Realm within Forty dayes. Why Forty dayes allowed. An account of the Ordeals by Fire and Water. Lady* Emme *clear'd by going over burning Coulters. Two sorts of tryal by Water. Learned conjectures at the rise and reason*

reaſon of theſe cuſtoms. Theſe Ordeals, as alſo that of ſingle Combat condemned by the Church, p. 84

CHAP. XVII.

Other Laws: Of entertaining of ſtrangers. An **Uncuth, a Guſt, a Hogenhine**; *what of him who confeſſeth the Murder, &c. Of* **Frank pledge.** *Of an Heir under age. Of a Widows Dowry. Of taking the Kings fealty. Of ſetting a time to do homage. Of the Juſtices duty. Of their demoliſhing of Caſtles. Of Felons to be put into the Sheriffs hands. Of thoſe who have departed the Realm,* p. 87

CHAP. XVIII.

Some Laws in favour of the Clergy. Of forfeitures on the account of Foreſt or hunting. Of Knights fees. Who to bear Arms, and what Arms. Arms not to be alienated. No Jew *to bear Arms. Arms not to be carryed out of* England. *Rich men under ſuſpicion to clear themſelves by Oath. Who allowed to ſwear againſt a Free-man. Timber for building of Ships not to be carryed out of* England. *None but Free-men to bear Arms. Free-men who. Ruſticks or Villains not ſuch,* p. 90

CHAP. XIX.

Of Law-makers. Our Kings not Monarchs at firſt. Several of them in the ſame County. The Druids *meeting-place where. Under the* Saxons, *Laws made in a general Aſſembly of the States. Several inſtances. This Aſſembly under the* Normans *called* Parliament. *The thing taken from a cuſtome of the ancient* Germans. *Who had right to ſit in Parliament. The harmony of the Three Eſtates,* p. 93

CHAP. XX.

The Guardians of the Laws, who. In the Saxons *time ſeven Chief. One of the Kings among the Heptarchs ſtyled* Monarch *of all* England. *The Office of Lord* High Conſtable. *Of Lord* Chancellor, *ancient. The Lord* Treaſurer. Alderman *of* England, *what. Why one called* **Healfkoning.** Aldermen *of Provinces and* Graves, *the ſame as* Counts *or* Earls *and* Viſcounts *or Sheriffs. Of the* County Court, *and the Court of Inqueſts, called* Tourn le Viſcount. *When this Court kept, and the original of it,* p. 95

CHAP. XXI.

Of the Norman *Earls. Their Fee. Their power of making Laws. Of the* Barons, i.e. *Lords of Manours. Of the* **Court-Baron.** *Its riſe. An inſtance of it out of* Hoveden. *Other Offices much alike with the* Saxons. p. 98

THE FIRST

BOOK

OF THE

ENGLISH

JANUS.

From the Beginning of the BRITISH Story down to the NORMAN Conqueſt.

CHAP. I.

The counterfeit Beroſus *with the Monk that put him forth, both cenſured. The Story of* Samothes *the firſt* Celtick *King. The bounds of* Celtica. *From* Samothes, *ſay they, the* Britans *and* Gauls *were called* Samothei. *For which* Diogenes Laertius *is falſly quoted; the word in him, being* Semnothei.

THERE came forth, and in Buskins too (I mean, with Pomp and State) ſome parcels of years ago, and is ſtill handed about every where, an Author, called *Beroſus* a *Chaldee* Prieſt (take heed how you ſuffer your ſelf to believe him to be the ſame that *Flavius Joſephus* ſo often up and down quotes for a witneſs) with a Commentary of *Viterbienſis*. Or, rather to ſay that which is the very truth, *John Annius* of *Viterbium* (a City of *Tuſcany.*) a *Dominican* Frier, playing the *Leger-de-main*, having counterfeited *Be-*

roſus,

roſus, to put off his own ſtrange ſtories, hath put a cheat upon the Lady *Muſe* who is the Governeſs of Antiquities, and has hung a Bantling at her back.

After the Genealogies of the *Hebrews* drawn down by that Author, whoever he be, according to his own humour and method, for fear he ſhould not be thought to take in the Kingdoms and Kings of the whole Univerſe, and the Etymologies of Proper Names by whole-ſale, as we ſay; as if he had been born the next day after Grandam *Ops* was delivered of *Jupiter*, he ſubjoyns SAMOTHES (the very ſame who is ycleped *Dis*) the Founder of the *Celtick* Colonies, ſtuffing up odd Patcheries of Story to entertain and abuſe the Reader.

Now, this I thought fit by the by, not to conceal, that all that ſpace which is bounded with the River *Rhine*, the *Alpes*, the *Mediterranean* Sea, the *Pyrenean* Hills, and laſtly, the *Gaſcoin* and the *Britiſh* Oceans, was formerly termed *Celtogalatia*; nay, that *Ptolomy* hath comprized all *Europe* under the name of *Celtica*.

Ptol. 2. Geogr. & 2. quadrip. & Pauſan. l. 1.

Well, as the Commentary of *Annius* has it, "This *Samothes* was "Brother to *Gomar* and *Tubal* by their Father *Japhet*, from whom firſt "the *Britans*, then the *Gauls* were called *Samothei*; and eſpecially the "Philoſophers and Divines that were his followers. And out of *Laertius* he tells us, "For it is evident, that among the *Perſians* the "*Magi* flouriſhed, among the *Babylonians* and *Aſſyrians* the *Chaldeans* "were famous, among the *Celts* and *Gauls* the *Druids*, and thoſe who "were called *Samothei*; who, as *Ariſtotle* in his Magick, and *Sotion* in "his Three and Twentieth Book of Succeſſions do witneſs, were men "very well skilled in Laws Divine and Humane, and upon that account "were much addicted to Religion; and were for that reaſon termed "*Samothei*. Theſe very words you meet with in *Annius*.

The name of *Laertius* is pretended, and the beginning of his Volume concerning the Lives of Philoſophers. Why then let us read *Laertius* himſelf; "and amongſt the *Celts* and *Gauls* (ſaith he) the *Semnothei* "as ſaith *Ariſtotle* in his Book of Magick, and *Sotion* in his Three and "Twentieth of Succeſſion. Concerning the *Samothei* any other wayes there is not ſo much as one ſyllable. That they were men well skilled in Laws Divine and Humane, or that they had their name given them upon that account, only the *Latin* and foiſted Edition of B. *Brognol* the *Venetian* has told us: whereas in truth, in all the ancient *Greek* Copies of *Laertius*, which that great Scholar *Harry Stephen* ſaw and conſulted with (and he ſayes he peruſed Eight or Nine) there is no mention at all made of that buſineſs.

And yet for all that, I cannot perſwade my ſelf, that it was only for want of care, or by meer chance, that this ſlipt into the Gloſſes: It does appear, that there have been able Lawyers and Maſter Philoſophers not only among the *Greeks*, the *Gauls*, and thoſe of *Italy*; but alſo among the *Northern* Nations, however Barbarous. Witneſs the *Druids* among us, and among the *Goths*, as *Jornandes* tells us, beſides *Coſmicus*, one *Dicenens*, who, being at once King of Men, and Prieſt of *Phœbus*, did together with Natural Philoſophy and other parts of good Learning, tranſmit to poſterity a Body of Laws, which they called *Bellagines*; that is, By-Laws.

Jornand. de reb. Goth. c. 11.

There are ſome, who in *Laertius* read *Samothei*; which is a device of thoſe men, who with too much eaſineſs (they are *Iſaac Caſaubon*'s words) that I may ſay no worſe, ſuffer themſelves to be led by the Noſe by that counterfeit *Beroſus*.

CHAP.

CHAP. II.

An Account of the Semnothei. *Why ſo called; the opinion of* H. Stephen, *and of the Author. Old Heroes and Philoſophers went by the names of Demy-gods. The* Σεμναὶ θεαὶ *or* Venerable Goddeſſes, *the ſame as* Eumenides, *diſpenſers of Juſtice. And by* Plutarch *and* Orpheus *they are ſet for Civil Magiſtrates. Judges in Scripture ſo called* Elohim, i. e. *Gods. Theſe* Semnai theai *the ſame as* Deæ Matres *in an old Britiſh Inſcription.*

AND indeed if the *Samothei* had any thing to do with truth, or the *Semnothei* any thing to do with the ancient Law of the *Celts* (in as much as they write, that *Britany* was once in ſubjection to the *Celtick* Kings) I ſhould judge it not much beſide the deſign of my intended Method to inquire into the name and nature of them both. But they being both one and t'other paſt all hope, except ſuch a one as *Lucian* returning from the Inhabitants of the Sun, or thoſe of the Moon, would write their Hiſtory, to ſpeak of them would be more than to loſe ones labour. I dare not to ſay much of them.

"I imagine, ſayes *Harry Stephen*, they were ſo called, for having the "Gods often in their mouths, and that in theſe words, οἱ Σεμνοὶ Θεοὶ, "that is, *The Worſhipful Gods*; or for that they themſelves were ac- "counted amongſt men as a kind of Worſhipful Gods: but, writes he, "this latter I do not take to be ſo likely as the former. But ſay I for my part, if I might venture my opinion againſt the judgement of ſo great a perſon, I gueſs this latter to be the likelier of the two. Steph. ad Laert.

That the old *Heroes* went by the names of Gods, is a thing we read every where; nor did Antiquity grudge the beſtowal of this honour even upon *Philoſophers*. Not upon *Amphiaraus* the Prophet; not upon *Æſculapius*, not upon *Hippocrates*, renowned Phyſicians; they are reckoned among the middle ſort of Gods. Thus *Plato* alſo was accounted by *Antiſtius Labeo* for a Demy-god, and *Tyrtamus* for his Divine eloquence, had the name of *Theophraſtus* (that is, God-like Speaker) given him by his Maſter *Ariſtotle*. No wonder then, if thereupon thence forward great Philoſophers were called *Semnothei*, and as it were Worſhipful Gods. Theſe inſtances incline me, whilſt I only take a view of their Philoſophy; whom, if either the authority of *Annius*, or the interpretation of *Brognol* had ſufficiently and fairly made out to have been alſo at the ſame time Students and Maſters of Law, I ſhould hardly ſtick almoſt to affirm, that I had found out in what places the true natural ſpring and ſource both of their name, and as I may ſay, of their delegated power is to be met with. Aug. de Civ. Dei, l. 2. c. 14. Laert. lib. 5.

For I have it in *Pauſanias* (forbear your flouts, becauſe I waft over into *Greece*, from whence the moſt ancient Cuſtoms both Sacred and Prophane of the *Gentiles* came) I ſay in *Pauſanias* the moſt diligent ſearcher of the *Greek* Antiquities, I meet upon *Mars* his Hill at *Athens*, and alſo in his *Achaicks* (or Survey of *Achaia*) with Chappels of the Goddeſſes whom the *Athenians* ſtyled Σεμνὰς, that is, *Worſhipful*. He himſelf

himſelf alſo in his *Corinthiacks* makes mention of a Grove ſet thick with a ſort of Oaks on the left ſide of *Aſopus* a River in *Sicyon* (a Countrey of *Peloponneſus*) where there ſtood a little Chappel of the Goddeſſes, whom the *Athenians* termed *Semnai*, the *Sicyonians* called *Eumenides*. The ſtory of *Oreſtes* and the *Eumenides* or Furies that haunted him is known to every body, nor can you tell me of any little ſmatterer in Poetry, who doth not know, that they, together with *Adraſtia*, *Rammuſia*, *Nemeſis*, and other Goddeſſes of the ſame ſtamp, are pretended to be the Avengers of Villanies, and continually to aſſiſt *Jupiter* the great God in puniſhing the wicked actions of Mortals. They were black ones that met with *Oreſtes*, but that there were white ones too, to whom together with the *Graces* the Ancients paid their Devotions; the ſame *Pauſanias* has left written in his Survey of *Arcadia*. I let paſs that in the ſame Author, ſhe whom ſome called *Erinnys*, that is a *Fury*; others called *Themis* the Goddeſs of *Juſtice*.

To be brief and plain; the *Furies*, that is, the Avenging Goddeſſes ſit upon the skirts of the wicked; but the *Eumenides*, that is, the kind Goddeſſes, as *Sophocles* interprets them (for that they were ſo called properly without the Figure of *Antiphraſis* or contradiction he is our Author) do attend the good and ſuch as are blameleſs and faultleſs, and poor ſuppliants. Nay, moreover *Plutarch* writes in a Poetick ſtrain, that *Alcmaon* fled from theſe *Eumenides*; meaning in very deed, that he made his eſcape from the Civil Magiſtrates. In a word, the whole buſineſs we have been aiming at, *Orpheus* compriſeth in two Verſes of that Hymn he has made upon thoſe Goddeſſes.

Soph. in Oedip. in Colon.

Plut. in lib. de Exilio.

Nat. Comes, Mythol. l. 3. c. 10. Plut. de Iſide & Oſiride.

Ἀλλ' αἰὲν θνητῶν πάντων ἐπ' ἀπείονα φῦλα
Ὄμμα δίκης ἐφορᾶτε Διιπετέων αἰὲν ἐοῦσαι.

which in a ſhort Paraphraſe ſpeaks thus;

But ye with eye of Juſtice, and a face
Of Majeſty ſurvey all humane race,
Judges commiſſion'd to all time and place.

See here plainly out of the moſt ancient Divine among the Heathens, how Judges and the Diſpenſers of Law paſs under the notion of theſe *Venerable Goddeſſes*: and it was a thing of cuſtom to term the Right of the Infernal Powers, as well as the Doctrine of the Heavenly ones, a thing Holy and Sacred. What hinders then I pray, but that one may gueſs, that the Name, and Title, and Attributes or Characters of the *Semnothei* ſprang forth and flowed from hence; to wit, from the *Semnai theai* or Venerable Goddeſſes?

Odyſſ. 3.

Homer in his Poems calls Kings Διοτρεφεῖς, that is, perſons bred and nouriſhed by *Jove*; yea, the Eternal and Sacred Scriptures themſelvs do more than once call Judges by that moſt holy name *Elohim*, that is, *Gods*. "*The* "*judgement is Gods, not Mans*; and (as *Munſter* remarks out of *Rabbi Kim*-"*chi*) whatſoever thing Scripture deſigns to magnifie or expreſs with "height, it ſubjoyns to it the name of God. God (as *Plutarch* has it out of *Plato*, who in his *Attick* ſtyle imitates our *Moſes*) hath ſet himſelf out as a pattern of the Good, the dreadful ſyllables of whoſe very not-to-be-uttered Name (though we take no notice of the *Cabaliſts* art) do ſtrike, move and twitch the ears of Mortals, and one while when thorough

Exod. 22. Pſal. 82. 2 Paral. 19. Munſt. ad Gen. c. 9.

Plut. de ſerâ Dei vindictâ.

thorough ignorance they ſtraggle out of the way, do bring them back into the path or track of Juſtice; another while when they are ſtopt up with prejudice, and are overcaſt with gloomy darkneſs, do with a ſtupendous, diſmal and continual trembling ſhake the poor wretches, and put them into Ague-fits. Nor let that be any hindrance, that ſo ſplendid and ſo manly a name is taken from the weaker Sex, to wit, the Goddeſſes.

Let us more eſpecially have to do with the *Britans*, as thoſe amongſt whom are thoſe choice and ſingular Altars, not any where elſe to be met with in the whole World, with this Inſcription, DEIS MATRIBUS, *To the Mother-Goddeſſes.* Concerning theſe *Mother-Goddeſſes*, that excellent Learned Man (that I may hint it by the by) confeſſes he could with all his ſearch find out nothing; but if ſuch a mean perſon as I, may have leave, What if one ſhould imagine, that thoſe Goddeſſes, whom *Pauſanias* in his *Attick* ſtories calls Γενάδας ϗ Γενετυλλίδας, were the ſame as theſe *Mother Goddeſſes?* for ſo thoſe Names import. *The Mother of the Gods* is a Title well known; wherewith not only *Berecynthia*, but alſo *Juno*, *Cybele*, *Tellus*, *Ceres*, and other Shees among Mythologiſts are celebrated and made famous. Camden.

Be this, if you will, a thing by the by and out of the way; as he tells us, *No great Wit ever pleaſed without a pardon.* Relying upon that (the Readers Pardon I mean) I undertook this Job, whatever it is; and upon confidence of that, I come back to the buſineſs. Senec. Epiſt. 115.

CHAP. III.

One Law of Samothes *out of* Baſingſtoke *concerning the reckoning of Time by Nights.* Bodinus *his cenſure of Aſtrologers for otherwiſe computing their Planetary Hours. A brief account of ſome of* Samothes *his Succeſſors*, Magus, Sarron, Druis, *from whom the* Druids, *&c.*

WE do not any where meet with any Law enacted by *Samothes* his authority. Yet one only one concerning the account of times, *Baſingſtoke* the Count *Palatine*, a very modern Hiſtorian, attributes to him. *He defined*, ſayes he, *the ſpaces* or intervals *of all time, not by the number of dayes, but of nights* (the ſame thing, ſaith *Cæſar* of the *Gauls*, and *Tacitus* of the *Germans*) *and he obſerved birth-dayes, and the commencements of months and years in that order, that the day ſhould come after the night.* Truth is, the *Britans* do at this time obſerve that faſhion, which is moſt ancient, and highly agreeable to Nature. *And the Evening and the Morning was the firſt day*, and ſo on, ſayes the *Hebrew* Writer, whoſe Countrey-men the *Jews* alſo followed this cuſtom. Gen. 1.

The *Peripateticks* (*i. e.* the followers of *Ariſtotle*) do alſo at this rate reckon *Privation* in the number of their three Principles; and hereupon *John Bodin* adventures to cenſure the common Aſtrologers, that they, according to the courſe of the Planets as they order it, and repeat it over and over, begin their unequal hours, from the riſing, rather than the ſetting of the Sun. Bodin. l. 3. dæmonoman.

They

They write, that after this *Samothes*, there came in play *Magus*, *Sarran*, *Druis*, *Bardus*, and others more than a good many, in order of ſucceſſion. "*Sarron* was not addicted to make Laws ('tis *Stephanus Forcatulus* helps us to this) but to compoſe them, to put them into order, "and to recommend them to practice, as one who reduced thoſe Laws, "which his Grand-father *Samothes*, and afterward his Father *Magus* had "made, into one Volume, and with ſevere Menaces gave order for the "keeping of them.

Forcat. l. 1. de Gall. Imp.

From *Druis* or *Druides* they will have the *Druids* ſo called, a ſort of Philoſophers ſo much famed and talked of in *Cæſar*, *Pliny* and others: believe it who liſt for me. The whole buſineſs of the *Druids* at preſent I put off till *Cæſar*'s times.

CHAP. IV.

K. Phranicus 900. *Years after* Samothes *being to reſide in* Pannonia, *intruſts the* Druids *with the Government. In the mean time* Brutus, Æneas *his Grand-ſon, arrives and is owned King by the* Britans, *and builds* Troynovant, *i. e.* London. Dunvallo Molmutius 600. *years after is King, and makes Laws concerning Sanctuaries, Roads or High-wayes and Plow-lands.* *K.* Belin *his Son confirms thoſe Laws, and caſts up four great Cauſe-wayes through the Iſland. A further account of* Molmutius.

ABout Nine hundred years after *Samothes*, King *Phranicus* (take it from the *Britiſh* ſtory, and upon the credit of our *Jeoffry*) intruſts the *Druids* with the management of affairs, whilſt he himſelf reſided in *Pannonia* or *Hungary*.

In the mean time *Brutus*, the Son of *Sylvius Poſthumus* King of the *Latines*, and Grand-child to *Æneas* (for *Servius Honoratus* in his Comment upon *Virgil*, makes *Sylvius* to be the Son of *Æneas*, not of *Aſcanius*) being happily arrived by Shipping, with *Corinus* one of the chief of his company, and coming to land at *Totnes* in *Devonſhire*, the *Britans* ſalute and own him King. He after he had built *New Troy* (that is, *London*) gave Laws to his Citizens and Subjects; thoſe ſuch as the *Trojans* had, or a Copy of theirs.

Serv. in 6. Æneid.

A matter of Six hundred years after *Dunvallo Molmutius* being King, ordained (my Authors beſides *Jeoffry* of *Monmouth*, are *Ralph* of *Cheſter* in his *Polychronicon*, and *Florilegus*) "that their Ploughs, Temples "and Roads that led to Cities, ſhould have the priviledge to be places "of refuge. But becauſe ſome time after there aroſe a difference con-"cerning the Roads or High-wayes, they being not diſtinguiſhed by "certain Limits and Bounds, King *Belin* Son of the foreſaid *Molmutius*, "to remove all doubt, cauſed to be made throughout the Iſland four "Royal High-wayes to which that priviledge might belong; to wit, "the **Foſſe** or **Dike**, **Watlingſtrete**, **Ermingſtrete**, and **Ikenild-ſtrete**. (But our Learned Countrey-man and the great Light of *Britan*, *William Camden*, *Clarenceaux* King at Arms is of opinion, theſe

theſe Cauſe-wayes were caſt up by the *Romans*; a thing that *Tacitus*, *Bede* and others do more than intimate.)

"Moreover, ſo ſayes *Jeoffry*, he ordained thoſe Laws, which were "called *Molmutius* his Laws, which to this very time are ſo famed "amongſt the *Engliſh*. Foraſmuch as amongſt other things, which "a long time after, *Gildas* ſet down in writing, he ordained, that the "Temples of the Gods, and that Cities ſhould have that reſpect and "veneration, that whatſoever runagate Servant, or guilty perſon ſhould "fly to them for refuge, he ſhould have pardon in the preſence of his "enemy or proſecutor. He ordained alſo, That the Wayes or Roads "which led to the aforeſaid Temples and Cities, as alſo the Ploughs of "Husbandmen ſhould be confirmed by the ſame Law: Afterwards "having reigned Forty years in peace, he dyed and was buried in the "City of *London*, then called *Troynovant*, near the Temple of Concord "(by which Temple, there are not wanting thoſe who underſtand that Illuſtrious Colledge on the Bank of *Thames*, conſecrated to the Study of our Common Law, now called **the Temple** and) "which he "himſelf had built for the confirmation of his Laws. At this rate *Jeoffry* tells the ſtory; but behold alſo thoſe things which *Polydore Virgil* hath gathered out of ancient Writers, whereof he wanted no ſtore. Norden in Brit. Speculi.

"He firſt uſed a Golden Crown, appointed Weights and Meaſures "for ſelling and buying of things, puniſht Thieves and all miſchie- "vous ſorts of men with the greateſt ſeverity; made a great many "High wayes; and gave order, how broad they ſhould be, and ordai- "ned by Law, that the right of thoſe Wayes belonged only to the "Prince; and ſet dreadful Penalties upon their heads, who ſhould vio- "late that right, alike as upon theirs who ſhould commit any miſde- "meanour in thoſe wayes. Moreover, that the Land might not "lye barren, nor the people be frequently oppreſſed or leſſened "through Dearth or want of Corn, if Cattle alone ſhould poſſeſs the "Fields, which ought to be tilled by men, he appointed how many "Ploughs every County ſhould have, and ſet a penalty upon them by "whoſe means that number ſhould be diminiſhed: And he made a "Law, That Labouring Beaſts which attended the Plough, ſhould not "be diſtrained by Officers, nor aſſigned over to Creditors for money "that was owing, if the Debtor had any other Goods left. Thus much *Polydore*.

CHAP. V.

A brief Account of Q. Regent Martia, *and of* **Merchenlage**, *whether ſo called from her, or from the* Mercians. Annius *again cenſured for a Forger, and his* Beroſus *for a Fabulous Writer.*

THe Female Government of *Martia*, Widow to King *Quintiline*, who had undertaken the Tuition of *Siſillius* Son to them both, he being not as yet fit for the Government, by reaſon of his Nonage; found out a Law, which the *Britons* called the *Martian* Law. This alſo among the reſt (I tell you but what *Jeoffry* of *Monmouth* tells me)

me) King *Alfred* tranſlated, which in the *Saxon* Tongue he called Merchenlage. Whereas nevertheleſs in that moſt elaborate Work of *Camden*, wherein he gives account of our Countrey, Merchenlage is more appoſitely and fitly derived from the *Mercians*, and they ſo called from the *Saxon* word Mearc, that is, a Limit, Bound or Border.

Theſe are the Stories, which Writers have delivered to us concerning thoſe times, which were more ancient than the Hiſtory of the *Romans*; but ſuch as are of ſuſpected, or doubtful, that I may not ſay of no credit at all. Among the more Learned, there is hardly any Critick, who does not ſet down *Annius* in the liſt of Forgers. And ſhould one go to draw up the account of Times, and to obſerve that difference which is ſo apparent in that *Beroſus* of *Viterbium* from Sacred Scriptures, and the Monuments of the *Hebrews*, one would perhaps think, that he were no more to be believed, than another of the ſame name, who from a perpendicular poſition of the wandring Stars to the Center of the World in the Sign of *Cancer*, adventured to foretel, that all things ſhould be burnt; and from a like Congreſs of them in *Capricorn*, to ſay, there would be an univerſal Deluge. The ſtory is in *Seneca*.

Senec. Nat. quæſt. l. 3 c. 29

CHAP. VI.

The ſtory of Brutus *canvaſt and taken to be a Poetick Fiction of the Bards.* Jeoffry *of* Monmouth's *credit called in queſtion. Antiquaries at a loſs in their judgements of theſe frivolous ſtories.*

SOme have in like manner made enquiry concerning our *Britiſh* Hiſtory, and ſtumbled at it. From hence we had *Brutus*, *Dunvallo* and Queen *Martia*: There are ſome both very Learned and very Judicious perſons, who ſuſpect, that that ſtory is patched up out of Bards Songs and Poetick Fictions taken upon truſt, like *Talmudical* Traditions, on purpoſe to raiſe the *Britiſh* name out of the *Trojan* aſhes. For though Antiquity, as one has it, is credited for a great witneſs; yet however 'tis a wonder, that this *Brutus*, who is reported to have killed his Father with an Arrow unluckily aimed, and to have been fatal to his Mother at her very delivery of him (for which reaſon *Richard Vitus* now after ſo many Ages makes his true name to be Βροτὸς, that is, *Mortal*) ſhould be mentioned by none of the *Romans*: a wonder, I ſay, that the *Latin* Writers ſhould not be acquainted with the name of a *Latin* Prince, who gave both Name and Government to *Britany*. Did *Euemerus Meſſenius* alone ever ſince the World began, ſail to the *Panchoans* and the *Triphyllians*? Indeed it is an ordinary thing for Poets, to ingraft thoſe whom they celebrate in their Poems, into Noble Stocks and Illuſtrious Families, and by the aſſiſtance of their Muſes heightning every thing above the truth, to feign and deviſe a great many ſtories. And what elſe were the *Bards*, as *Athenæus* tells us out of *Poſſidonius*; but Poets reciting mens praiſes in ſong? How many things are there in that Fabulous Age (which in *Joſeph Scaliger*'s account would more aptly be called the *Heroick* Age of the World, I mean) down from that much

Athen. dipnoſ. l. 6.

Joſ. Scal. in Elench. Orat. Chron. D. Par.

much talked of Deluge of *Pyrrha* to the beginning of *Iphitus* his Olympiads; how many idle ſtories are there mixt with true ones, and afterwards dreſt up and brought upon the ſtage? "Very many Nations, "ſayes *Trithemius*, as well in *Europe* as in *Aſia*, pretend they took their "original from the *Trojans*; to whom I have thought good to lend ſo "much faith, as they ſhall be able to perſwade me of truth by ſufficient teſtimony. They are frivolous things, which they bring concerning their own Nobility and Antiquity, having a mind as it were openly "to boaſt, as if there had been no people in *Europe* before the deſtruction of *Troy*; and as if there had been no one among the *Trojans* "themſelves of ignoble birth. Trithem. lib. de ſecundis.

He who made the Alphabetical *Index* to *Jeoffry* of *Monmouth* (who was Biſhop of St. *Aſaph* too) as he is printed and put forth by *Aſcenſius*, propt up the Authors credit upon this account, that, as he ſayes, he makes no mention any where in his Book, of the *Franks*; by reaſon forſooth, that all thoſe things almoſt, which he has written of, were done and paſt before the *Franks* arrival in *France*. This was a ſlip ſurely more than of memory. Go to *Jeoffry* himſelf, and in his Nineteenth Chapter of his firſt Book you meet with the *Franks* in the time of *Brennus* and *Belinus* among the *Senones*, a people of *France*: a groſs miſreckoning of I know not how many hundred years. For the *Franks* are not known to have taken up their quarters on this ſide the River *Rhine*, till ſome Centuries of years after *Chriſts* Incarnation. For howbeit by Poetick licence and Rhetorical figure *Æneas* be ſaid to have come to the *Lavinian* Shores, (which had not that name till ſome time after) yet it were much better, that, both in Verſe and Proſe, thoſe things which appertain to Hiſtory, ſhould be expreſſed according to that form of *Ovid*; where at the burning of *Rhemus* his Funeral Pile he ſayes,

Tunc Juvenes nondum facti ſievere Quirites, Ovid. 4. Faſt.

that is,

The young men then not yet Quirites made,
Wept as the body on the Pile they laid.

And at this rate *Jeoffry* might and ought to have made his Tranſlation, if he would have been a faithful Interpreter.

But as to our *Brutus* whence the *Britans*, *Saxo* whence the *Saxons*, *Bruno* whence thoſe of *Brunſwick*, *Freſo* whence thoſe of *Friſeland*, and *Bato* whence the *Batavians* had their riſe and name; take notice what *Pontus Heuterus* obſerves, as others have done before him. "Songs or "Ballads, ſayes he, and Rhymes made in an unlearned Age, with eaſe "obtruded falſhoods for truths upon ſimple people, or mingling falſehoods with truths impoſed upon them. For three or four hundred "years ago there was nothing that our Anceſtors heard with greater "glee, than that they were deſcended from the adulterous *Trojans*, from "*Alexander* of *Macedonia* the Overthrower of Kingdoms, from that Man-queller *Hercules* of *Greece*, or from ſome other diſturber of the World. And indeed that is too true which he ſayes, Heuter. de Vet. Belgio. l. 2. c. 8.

Ovid. Metam. 12.

——Menſuraque fictis
Creſcit, & auditis aliquid novus adjicit auctor.

which in plain Engliſh ſpeaks this ſence.

Thus Stories nothing in the telling loſe,
The next Relater adding ſtill to th' News.

But I will not inlarge.

To clear theſe points aright, Antiquaries, who are at ſee-ſaw about them, will perhaps eternally be at loſs, like the *Hebrews* in their myſterious debates, for want of ſome *Elias* to come and reſolve their doubts.

CHAP. VII.

What the Trojan *Laws were, which* Brutus *brought in. That concerning the Eldeſt Sons Inheriting the whole Eſtate, confuted. In the firſt times there were no Poſitive Laws; yet mention made of them in ſome very ancient Authors, notwithſtanding a remark of ſome ancient Writers to the contrary.*

WEll! Suppoſe we grant there was ſuch a Perſon ever in the World as *Brutus*: He made Laws, they ſay, and thoſe taken out of the *Trojan* Laws; but what I pray were thoſe *Trojan* Laws themſelves? There is one, I know well enough, they ſpeak of, concerning the Prerogative of the eldeſt Sons, by which they inherited the whole Right and Eſtate of their deceaſed Father. *Herodotus* writes it of *Hector*, Son and Heir to King *Priam*, and *Jeoffry* mentions it; but did this Law croſs the Sea with *Brutus* into *Brittany*? How then came it, that the Kingdom was divided betwixt the three Brothers, *Locrinus*, *Camber*, and *Albanactus*? betwixt the two, *Ferrix* and *Porrix*? betwixt *Brennus* and *Belinus*? and the like of ſome others. How came it, that in a Parliament of *Henry* the Eighth, proviſion was made, that the Free-holds of *Wales* ſhould not thence-forward paſs according to that cuſtom, which they call **Gabelkind**? And anciently, if I be not miſtaken, moſt Inheritances were parted among the Children, as we find in *Heſiods* works.

Herodot. in Euterpe.

Stat. 37 Hen. 8. c. 26.

Ἤδη μὲν γὰρ τὸν κλῆρον ἐδεδάσμεθ'.——

i. e. We had already parted the Eſtate.

And to the ſame purpoſe many like paſſages there are in old Poets, and in Holy Writ. But, as I ſaid, what are thoſe *Trojan* Laws? Perhaps the ſame with thoſe, by which *Nephelococcygia*, the City of the Birds in *Ariſtophanes*, (or, as we uſe to ſay, *Utopia*) is Governed.

The graveſt Writers do acknowledge, that thoſe moſt ancient times were for the moſt part free from poſitive Laws. *The people*, ſo ſays *Juſtin*, *were held by no Laws: The Pleaſures and Reſolves of their Princes paſt for Laws, or were inſtead of Laws.* Natural Equity, like the *Lesbian* Rule

Juſtin hiſt. l. 1.

Rule in *Ariſtotle*, being adapted, applied, and fitted to the variety of emergent quarrels, and ſtrifes, ordered, over-ruled, and decided all Controverſies. "And indeed at the beginning of the *Roman* State, "as *Pomponius* writes, the people reſolved to live without any certain "Law or Right, and all things were governed by the hand and power of the King: For they were but at a little diſtance from the Golden Age, when

Ariſt. 5. Eth.

ff. de Orig. jur. l. 2.

——— *vindice nullo*
Sponte ſuâ ſine lege fidem rectumque colebant.

Metam. 1. & Lucr. l. 5. cum Poetarum turba.

That is to ſay, when

——People did not grudge
To be plain honeſt without Law or Judge.

That which the Hereſie of the *Chiliaſts* heretofore affirmed, concerning the Sabbatick or ſeventh Millenary, or thouſand years of the World. And thoſe Shepherds or Governors of the people, to whom

Auguſt. de civ. Dei l. 19. c. 14.

——— Ζεὺς ἐγγυάλιξε
Σκῆπτρόν τ' ἠδὲ θέμιστας———

Hom. Iliad. 9.

that is,

———Into whoſe hand
Jove truſts his Laws and Scepter for Command.

did Govern them by the guidance of vertue, and of thoſe Laws which the *Platonicks* call the Laws of *ſecond Venus*. "Not out of the ambition "of Rule, as St. *Auſtin* hath it, but out of duty of Counſel; nor out of "a domineering pride, but out of a provident tenderneſs. Do you think the *Trojans* had any other Laws? Only except the worſhip of their Gods and thoſe things which belong to Religion. *It was duty*, ſays *Seneca, not dignity, to Reign and Govern*: And an Eye and a Scepter among the *Ægyptians*, were the abſolute Hieroglyphicks of Kings.

Senec. ep. 91. Plut. de Iſid. & Oſirid.

What? that there is not ſo much as the word NOMOΣ, that is *Law*, to be met with in thoſe old Poets, *Orpheus*, *Muſæus*, or *Homer*, (who was about an hundred and fifty years after the deſtruction of *Troy*) as *Joſephus* againſt *Appio*, *Plutarch*, and ſeveral modern Writers have remarked: I confeſs, if one well conſider it, this remark of theirs is not very accurate. For we very often read in *Homer* and *Heſiod*, the word θέμιστες, which ſignifies *Laws*; and in both of them the Goddeſs *Eunomia* from the ſame Theme as Νόμος.

Joſeph. adv. App. l. 2. Plut. in lib. de Homero.

Αὐτοὶ δ' εὐνομίῃσι πόλιν κατὰ κάλλιγυναῖκας,
Κοιρανέουσ'.———

which being interpreted, is

But they by legal methods bear the ſway
I'th' City fam'd for Beauties.——

Plut. lib. de Muſicâ. which is a paſſage in *Homers* hymn to Mother *Tellus*, and Νόμος ᾠδῆς, *i. e. the Law of Song*, (which Muſicians might not tranſgreſs) is mentioned

Plato in Minoc. in his hymn to *Apollo*. Nay great *Plato*, one beyond all exception, has left it in writing, that *Talus* (who had the management of the *Cretan* Common-wealth committed to him, together with *Rhadamanthus*, the Son of *Jupiter*, by King *Minos*) that he did thrice every year go the cir-

Sol. Polyhiſt. cap. 6. cuit through the whole Iſland (which was the firſt Country, as *Polyhiſtor* tells us, that joyned the practice of Laws with the ſtudy of Letters) and kept Aſſizes, giving Judgment according to Laws engraven in braſs. I ſay nothing of *Phoroneus* King of the *Argives*, or of *Nomio* the *Arcadian*; and in good time leave this Subject.

I could wiſh I might peruſe *Jupiters* Regiſter, wherein he has recorded humane affairs. I could wiſh, that the cenſure of ſome breathing Library and living ſtudy (which might have power over the Ancients,

Eunap. in vit. Porphyr. as we read in *Eunapius* that *Longinus* had) or that the memory of ſome *Æthalides* might help us ſufficiently to clear and make out the truth.

Hence our next paſſage is to the Claſſick Writers of the *Latin* ſtyle and ſtory.

CHAP. VIII.

An Account of the DRUIDS out of Cæſar's *Commentaries, whence they were ſo called. Their determining in point of Law, and paſſing Sentence in caſe of Crime. Their Award binds all parties. Their way of Excommunicating or Outlawing. They have a Chief over them. How he is choſen. Their Priviledge and Immunity.*

Cajus Julius Cæſar was the firſt of the *Romans*, who has committed to writing the Religious Rites, the Laws and the Philoſophy of the *DRUIDS*. Their name is of a doubtful origination, by no means were they ſo called from that *Druis* or *Druides* we meet with in *Beroſus*: But whether they were ſo termed from a Greek word Δρῦς, that ſignifies an *Oak*, in that they performed none of their devotions without oaken

Plin. nat. hiſt. l. 16. c. 44. Gorop. in Gal. leaves, as *Pliny* and thoſe that follow him are of opinion; or from the Dutch **True-wiſe**, as *Goropius Becanus* will have it; or from **Trutin**,

Paul. Merula, in Coſmogr. part. 2. lib. 3. a word which with the ancient *Germans* ſignified *God*, as *Paulus Merula* quotes it out of the Goſpel of *Othfred* (though in the Angels ſalutation, in the *Magnificat*, in *Zachariahs* Song and elſewhere, *Trutin* rather denotes *Lord* than *God*; and ſee whether there does not lye ſomewhat of the *Druid* in the name of St. *Truien*, among the people of *Liege*, ſome having exploded St. *Drudo*) whenceſoever they had their name, theſe Gownmen among the *Gauls*, I and the *Britans* too, were the Interpreters and Guardians of the Laws. The diſcipline of theſe *Druids* was firſt found in *Britany*, and ſo far as it regards the Civil Court, we ſhall faithfully ſubjoyn it out of the forenamed *Cæſar*.

1. "They order matters concerning all controverſie, publick and private. So in the Laws of the twelve Tables at the ſame rate the knowledg of caſes, of precedents, of interpreting was in the Colledge of

of Pontiffs or High Prieſts, and ſuch plainly our *Druids* were. "If any "ill prank had been played, if murder committed, if there were a contro- "verſie about Inheritance, about bounds of Land, theſe were the men "that determined it, theſe amerced rewards and puniſhments.

2. "If any private perſon or body of men do not ſtand to their award, "they excommunicate him, that is, forbid him to come to ſacrifice, "which among them is the moſt grievous puniſhment.

3. "Thoſe who are thus excommunicated, are accounted wicked and "ungodly wretches, every body goes out of their way, and ſhuns their "company and converſation for fear of getting any harm by contagion. "Neither have they the benefit of the Law when they deſire it, nor is a- "ny reſpect ſhown to them.

4. "The *Druids* have one over them, who has the chiefeſt authority "amongſt them.

5. "When he dies, if there be any one that is eminent above the reſt, he "ſucceeds in place: But if there be ſeveral of equal merit, one is choſen "by majority of Votes.

6. "The *Druids* were wont to be excuſed from perſonal attendance "in War, nor did they pay taxes with the reſt; they were freed from "Military employ, and had an immunity of all things. The *Levites* a- "mong the *Hebrews*, who were the moſt ancient Prieſts in the world, "injoyed the ſame priviledge. Num. 1. 49. Ezra 7. 24.

CHAP. IX.

The menage of their Schools without Writing. On other occaſions they might uſe the Greek *Letters, as* Cæſar *ſaith, yet not have the language. The* Greek *Letters then were others than what they are now. Theſe borrowed from the* Gauls, *as thoſe from the* Phœnicians. **Ceregy-Dzudion**, *or the* Druids Stones *in* Wales. *This Place of* Cæſar's *ſuſpected.* Lipſius *his Judgment of the whole Book.*

7. UPon the account of that priviledge, they had in their Schools (which were moſt of them in *Britany*) a great confluence of youth. "They are ſaid to learn without Book, ſays *Cæſar*, a great num- "ber of Verſes: Therefore ſome of them ſpend twenty years in the diſ- "cipline. Nor do they judge it meet to commit ſuch things to writing, "whereas generally in all other, whether publick affairs or private ac- "compts, they make uſe of *Greek letters*.

What? *Greek letters?* ſo we read *Greek* ones. Why! *Marſeilles*, a City of *France*, which was a Greek Colony of the *Phocians*, had made the *Gauls* ſuch lovers of *Greeks*, that, as *Strabo* the Geographer tells us, they writ their very Contracts and Covenants, Bargains and Agreements, in *Greek*. The fore-mentioned *Julius Cæſar* alſo writes, that there were Tablets found in the Camp of the *Switzers*, made up of *Greek* letters. Strab. Geogr. lib. 4. Cæſ. de bello Gall. l. 1.

But, for all that, I would not have any one from hence raſhly to gather, that the *Greek Language* was in uſe to that Age and People, or to theſe Philoſophers and Lawyers. They made uſe of *Greek letters*, therefore

fore they had the *Greek Tongue* too; this truly were a pitiful conſequence. At this rate the *Targum* or *Chaldee Paraphraſe*, as *Paulus Merula* has it, and *Goropius* before him, would conſiſt of the *Hebrew Language*, becauſe 'tis Printed in *Hebrew Characters*: And the like may be ſaid of the *New Teſtament* in *Syriack*, done in *Hebrew letters*.

What? that thoſe very Letters of the *Greeks* in *Cæſars* time, and as we now write them, are rather *Gallick* (as borrowed from the *Gauls*) than *Greek*? He was acquainted with thoſe *Greek* letters, but did not yet know the *Gallick* ones, which learned men do think the *Greeks* took for their Copy, after the *Phœnician* letters, which were not altogether unlike the *Hebrew*, were grown out of uſe. Conſult for this *Wolfgangus Lazius* his *Celtæ*, *Becanus* his *Gallica*, and if thou haſt a mind, *Annius* his *Archilochus*, *Xenophons Æquivoca*, and what others write concerning *Linus*, *Cadmus*, *Palamedes*, and *Simonides*, the firſt Inventors of the Alphabet.

In the mean time take this from me, that thoſe ancient and rude *Gothick* Characters, which *Bonaventure Vulcanius* of *Bruges*, lately put forth, with a little comentary of one without a name, do very much reſemble the *Greek* ones (as alſo the *Ruſſian* Characters do at this day) and that thoſe which are now *Latin* letters, were at firſt brought over into *Italy* out of *Arcadia*, along with *Nicoſtrata* the Mother of *Evander*, who was baniſhed his Country.

Vulcan. in app. ad Jornand. Goth. Munſt. Coſm. l. 4.

But that which ſeems to put the matter out of all diſpute, *Cæſar* being about to write to *Quintus Cicero*, who was then beſieged ſomewhere in *Flanders*, among the *Nervians*, by great rewards perſwades a Chevalier, that was a *Gaul*, to carry the Letter for him: He ſends it written in *Greek*, leſt peradventure it being intercepted, the Enemy ſhould come to know their deſign. To what purpoſe ſhould he have done this, if that Chevalier, who was a *Gaul*, or if the *Gauls*, or if the very *Druids* themſelves, who had the management of State, had been skilled in *Greek*?

Cæſ. bell. Gal. l. 5.

Among the Weſtern Hills of *Denbeigh*, a County in *North-Wales*, there is a place, as I read in our famous Chorographer, commonly cal- "led **Ceregy-Drudion**, that is, the *Druids Stones*, and ſome ſmall pil- "lars are ſeen at *Yvoellas*, inſcribed with foreign Characters, which "ſome ſuſpect to have been thoſe of the *Druids*. Who if they have rea- ſon ſo to ſuſpect, I would to God, Time, with his ruſty teeth, had ſpa- red thoſe Pillars, that ſo ſome light might ſhine from thence to clear this quarrel.

If ſo be our interpretation of that form of *Cæſars* ſpeaking, which we brought, do not pleaſe (as to *Strabo's* teſtimony, that reſpects ſome- what later times, and perhaps mainly concerns thoſe who lived near the Sea-ſide) why mayſt not thou, with that great Scholar *Francis Hotoman* be of opinion, that the word *Græcis* crept into this Story, either by the careleſneſs or confidence of Tranſcribers? For elſewhere in that very Author, where it is ſaid, *dextris humeris exertis*, *Juſtus Lipſius*, the Prince of *Criticks*, remarks, that the word *humeris* is plainly redundant, thruſt in perchance by the Vamper of that Story, *Julius Celſus*.

Hotoman. c. 2. Franco-galliæ.

Cæſ. bell. Gal. l. 7.

And what ſo great a man, of ſo great a judgment as he was, did cenſure of thoſe Commentaries of *Cæſar*, in his Book called *Electa*, or *Choice Pieces*, take from himſelf thus. "I ſee many patches ſtitched into that "Purple; nor doth the expreſſion it ſelf there every where breath to my "Noſtrils that golden (as I may ſo ſay) Gum, or liquid myrrh, of pure "antiquity. Read it, read it over again, you will find many things idly

Lipſ. Elect. lib. 2. cap. 7. & quæſt. Epiſtolic. l. 2. c. 2.

"ſaid,

"ſaid, disjoynted, intricate, vampt, ſaid over and over, that it is not "unreaſonable to think, but that ſome Novel and unskilful hand "was added to this, as it were, ſtatue of ancient work. Therefore we may be eaſily cheated, if we ſtand upon ſuch little ſcruples of words, as we ſhall meet with in one *Julius* or other, *Cæſar* or *Celſus*.

CHAP. X.

The Druids *reckoning of time. An Age conſiſts of thirty Years. What Authors treat of the* Druids. *Their Doctrines and Cuſtoms ſavour of* Pythagoras *and the* Cabaliſts. *They were the eldeſt Philoſophers and Lawyers among the* Gentiles. *Some odd Images of theirs in Stone, in an Abby near* Voitland, *deſcribed.*

8. "THe *Druids* begun their Months and Years from the ſixth Moon "(ſo ſays *Pliny*) and that which they called an Age after the "thirtieth year. In the *Attick* account an Age or Generation, and that of a man in his prime and ſtrength, was comprized within the ſame terms, according to the opinion of *Heraclitus*, and as it is in *Herodotus*; nor had *Neſtor's* triple Age a larger compaſs, if one may believe *Euſtathius*. Plin. nat. hiſt. l. 16. c. 44. Plut. de orac. def. Herod. Euterp. Euſtath. ad 1. Iliad.

Tiberius drove theſe *Druids* out of the two *Gallia's*, *Claudius* baniſht them out of *Rome*, and the worſhip of the true God *Chriſt*, ſped them out of *Britany*. Senec. in Apocol. Plin. l. 30. c. 1.

What further appertains to the ſacred Rites and Doctrine of the *Druids*, (not to ſpeak further of *Cæſar*) *Strabo*, *Pliny*, *Diodorus Siculus*, (by the way his Latin Verſion we do not owe to *Poggius* of *Florence*, as the Books publiſhed would make us believe, but to *John Frea* formerly Fellow of *Baliol* Colledge in *Oxford*, if we may believe an Original Copy in the Library of the ſaid Colledge.) Beſide theſe, *Lucan*, *Pomponius Mela*, *Ammianus Marcellinus*, and very lately *Otho Heurnius*, in his *Antiquities of Barbarous Philoſophy*, and others have, with ſufficient plainneſs, delivered, yet ſo, that every thing they ſay ſavours of *Pythagoras* (and yet I am ne're a whit the more perſwaded that *Pythagoras* ever taught in *Merton-hall* at *Oxford*, or *Anaxagoras* at *Cambridge*, as *Cantilep* and *Lidgate* have it) I and of the *Cabaliſts* too (for *John Reuchlin* hath compared the diſcipline of *Pythagoras*, and that of the *Cabaliſts*, as not much unlike.) Whether the *Druids*, ſays *Lipſius*, had their *Metempſychoſis* or tranſmigration of Souls, from *Pythagoras*, or he from them, I cannot tell. Br. Tuin. Apolog antiq. Academ. Oxon. l. 3. §. 329. Reuch l. 2. de arte Cabaliſt. Lipſ. Stoic. phyſiolog l. 3. diſſert. 12. & vide Forcatulum l. 1. de Gall. Imperio.

The very ſame thing is alike to be ſaid, concerning their Laws, and the Common-wealths which they both of them managed: They have both the ſame features as like as may be, as it was with *Cneius Pompey*, and *Caius Vibius*. For the *Samian* Philoſopher did not only teach thoſe ſecrets of Philoſophy which are reſerved, and kept up cloſe in the inner ſhrine; but alſo returning from *Egypt* he went to *Croton*, a City of *Italy*, and there gave Laws to the *Italians*, (my Author is *Laertius*) and with near upon three hundred Scholars, governed at the rate, as it were of an Ariſtocracy. The Laws of *Zaleucus* and *Charondas* are commended and had in requeſt. "Theſe men, ſays *Seneca*, did not in a Hall of Juſtice, "nor in an Inns of Court, but in that ſecret and holy retirement of *Py-* Laert. l. 8. & Plut. orat 2. de Eſu carnium. Senec. Epiſt. 91.

"*thagoras*

"*thagoras*, learn thoſe Inſtitutes of Law, which they might propoſe to "*Sicily* and to *Greece*, all over *Italy*, both at that time flouriſhing. That holy and ſilent receſs was perchance borrowed of the *Druids*: Foraſmuch as what *Clement* of *Alexandria* witneſſes, heretofore the more ſecret and myſterious Arts were derived from the *Barbarians* to the *Greeks*.

Clem. l. 1. Strom.

However the buſineſs be, it appears hence plainly, that the *Druids* were of the oldeſt ſtanding among the Philoſophers of the Gentiles, and the moſt ancient among their Guardians of Laws. For grant they were of *Pythagoras* his School, yet even at that rate they are brought back at leaſt to the fiftieth or ſixtieth *Olympiad*, or if thou wilt, to the Tyranny of the *Tarquins*, which is about two and twenty hundred years ago. 'Tis true, *Pliny*, *Cicero*, *Auſtin*, *Euſebius* diſagree in this point; nor will I catch that miſtake by the handle, which draws him, meaning *Pythagoras*, back to *Numa's time*.

To what hath been ſaid, I ſhall not grudge to ſubjoyn a Surplage out of *Conradus Celtes*. He is ſpeaking of ſome ancient Images of ſtone, which he had ſeen in a certain Abby at the foot of a Hill that bears Pines, commonly called *Vichtelberg*, in the Neighbourhood of *Voitland*, which he conceives did by way of Statue repreſent the *Druids*. "They were "ſix in number, ſays he, at the door of the Temple niched into the Wall, "of ſeven foot apiece in height, bare-footed, having their Heads un- "covered, with a Greekiſh Cloak on, and that Hooded, and a Satchel "or ſcrip by their ſide, their Beard hanging down to their very Privities, "and forked or parted in two about their Noſtrils; in their Hands a Book "and a Staff like that of *Diogenes*, with a ſevere Forehead and a melan- "choly Brow, ſtooping down with their Head, and faſtening their Eyes "on the ground. Which deſcription, how it agrees with thoſe things which are recounted by *Cæſar* and *Strabo*, concerning the Golden adornments, the dyed and coloured Veſtures, the Bracelets, the ſhaved Cheeks and Chin of the *Britans*, and other things of the like kind, let them who are concerned look to that.

Apud P. Merulam in Coſmogr. part 2. lib. 3.

CHAP. XI.

The Britans *and* Gauls *had Laws and Cuſtoms much alike, and whence that came. Some things common to them both, ſet down; in relation to the breeding of their Children, the Marrying of their Wives, the Governing of their Families, burning Women that killed their Husbands, and burning ſome Servants with the dead Maſter for company. Together with ſome Remarks of their publick Government.*

BUt foraſmuch as *Britanny* gave the beginnings and improvements to the diſcipline of theſe *Druids*, and both *Britans* and *Gauls* had their Government, Cuſtoms, Language, Rites ſacred and profane, every thing almoſt the ſame, or much alike, as Mr. *William Camden* hath ſome while ſince moſt learnedly made out, O Mr. *Camden*, with what reſpect ſhall I name thee!

Camden.

In

In freta dum fluvii current, dum montibus umbræ
Luſtrabunt convexa, ac dum Cynoſura Britannos,
Semper honos, nomenque tuum, laudeſque manebunt.

Which in hearty Engliſh makes this acknowledgment of his worth,

As long as Rivers run into the Main,
Whilſt Shades on Mountains ſhall the Welkin hide,
And Britans ſhall behold the Northern Wain,
Thy Honour, Name, and Praiſe ſhall ſtill abide.

And it is evident, that a great part of *Britany* was once under the Government of *Divitiacus* King of the *Soiſſons*, a People of *France*. Therefore theſe following Remarks I thought not amiſs to ſet down as *Britiſh*, whether they were imparted to this Iſle by the ancient *Gauls* (by reaſon of its nearneſs) or whether the *Gauls* owed them to the *Britans*.

9. "They do not ſuffer their Children to come to them in open ſight; "(they are *Cæſar's* words) but when they are grown up to that Age, "that they may be able to undergo Military duty and to ſerve in War.

10. "The men, what mony they receive with their Wives upon ac- "count of portion, they lay down ſo much out of their own Eſtate upon "an appraiſement made to make a joint ſtock with the portion. There is "an account jointly kept of all this mony, and the profits of it are re- "ſerved; the longer liver is to have both ſhares, with the profits of the "former times.

11. "The men have power of life and death over their Wives, as "well as over their Children. Hereupon *Bodin* charges *Juſtinian* with a falſhood, for affirming that other people had not the ſame Fatherly power as the *Romans* had. Bodin. de repub. l. 1. c. 4.

12. "When a Maſter of a Family, who is of higher birth and quality, "dies, his Kindred meet together, that if the manner of his death were "ſuſpicious, they may by torture, as Servants were uſed, examine the "Wife concerning the buſineſs, and if ſhe be found guilty, they torment "her miſerably and burn her alive. To this ſtory that moſt excellent Lawyer, and worthy Lord Chief Juſtice of the Common Pleas, Sir *Edward Coke*, refers the antiquity of that Law, which we at this day uſe of devoting to the flames thoſe wicked Baggages, who ſtain their hands with the nefarious murder of their Husbands. In præfat. ad l. 6. Relat.

13. "Thoſe Servants and Dependents, who were known to have been "beloved by their Maſter in his life time, were, when the Funeral Rites "were prepared, burnt with him for company.

14. "It was ordered, that if any one by flying report or common fame "had heard any thing from the borders, that might concern the Com- "mon-wealth, he was to make it known to ſome Magiſtrate, and not "impart it to any body elſe.

15. "The Magiſtrates conceal thoſe things they think fit, and what "they judge may be of uſe to the Publick, they diſcover to the populace.

16. "No body has leave to ſpeak of the Common-wealth, or of pub- "lick affairs, but in Council or Parliament.

17. "They came armed into the Council or to Parliament. So the cuſtom of the Nation was, ſaith *Livy*; and *Tacitus*, the like of the *Germans*. Liv. lib. 21.

CHAP. XII.

Women admitted to publick debates. A large commendation of the Sex, together with a vindication of their fitneſs to govern; againſt the Salick *Law, made out by ſeveral examples of moſt Nations.*

Plut. de virtut. mulier.

18. "IT was grown a cuſtom amongſt them (we meet with this in "*Plutarch*) that they treated of Peace and War with their wo-"men in company, and if any queſtions aroſe betwixt them and their "Allies, they left it to them to determine. The ſame cuſtom the *Cecropians*, (that is, the people of *Athens*) once had, as *Auſtin* relates it out of *Varro*, before the women by majority of Vote carried it for *Minerva* againſt *Neptune*.

Aug. de Civ. Dei l. 18. c. 9.

Away with you, *Simonides*, and whoſoever you are, ſcoundrels, that unworthily abuſe the finer and brighter Sex. Good *Angerona*, thou Goddeſs of Silence, waſh, nay ſtop *Eubulus* his foul mouth, who denies there were ever any good women more than two in the world, to wit, chaſt *Penelope*, and *Alceſtis*, who died in her Husbands ſtead.

Athenæus.

How large an honour was paid to the counſels, the prudence, the virtue of the *Gauliſh* Ladies in their chiefeſt affairs, and not without their deſert? How much honour even at this day, is yearly paid at *Orleance*, on the eighth of *May*, to the Statue of *Joan Darcy* of *Lorain*, that ſtands on the bank of the River *Loir*; who obliged her dear Country with a Victory wonderfully got, when all had been loſt.

Paul. Æmil. hiſt. Franc. l. 10.

To paſs by other arguments, Antiquity holds this Sex to be equally divine as the Male. In Heaven, Sea, Earth, together with *Jupiter*, *Neptune*, *Pluto*, who were the Gods that ſhared the world, there governed *Juno*, *Salacia*, *Proſerpina*, their Goddeſſes. Marry! in *Varro*'s three fold Divinity, there are more ſhe-Gods than he-Gods.

Ovid. de arte amandi l. 3.

Ipſa quoque & cultu eſt, & nomine fœmina Virtus.

Virtue her ſelf, howe're it came,
Is Female both in Dreſs and Name.

But I do not go to act over *Caius Agrippa*'s part, by declaiming upon Female excellency. The thing it ſelf ſpeaks more than I can, and the ſubject is its own beſt Orator.

I muſt add one thing which *Cornelius Tacitus* tells us of the *Britans*, Tac. in vit. Agric. & Annal. l. 14. "that they were wont to war under the conduct of women, and to make "no difference of Sex in places of Command and Government. Which places yet there are ſome who ſtiffly deny, that Women by right ſhould have the charge of; as being, what *Euripides* ſays of them,

Eurip. in Medeâ.

Κακὸς δ' ἐς ἀλκὰν ἠδὲ δόρυσσιν εἰσορᾶν.

that is,

But ill for the ſtout feats of War,
Who ſcarce to look on Iron dare.

But

But thoſe Authors eſpecially, who, propped up with the *Salick Law* (as they call it) write, that Males only are by right of inheritance capable of the Government of the *French*, they do hold and maintain this argument tooth and nail, with all the unkindneſs and ſpite as may be to the *Engliſh* Law, which admits of Women to the Throne. They urge, that not only the Laws of *Pharamond*, but Nature her ſelf is on their ſide. "The Government of women ('tis *Bodin of Anjou* ſayes it) "is contrary to the Laws of Nature, which hath beſtowed upon men "diſcretion, ſtrength of body, courage and greatneſs of Spirit, with the "power of Rule, and hath taken theſe things from women. Bodin. de repub. l. 6. c. 5.

But, ſweet Mr. *Bodin*, are not diſcretion, ſtrength, courage and the arts of Government, more to be deſired and required in thoſe who have the Tuition of Kings in their Minority, than in the Kings themſelves till they are come to age? Truly I am of that mind. For why then, pray tell me, did not that reaſon of yours wring the Guardianſhip of St. *Louis* out of the hands of the Queen-Mother *Blanch*? why not out of *Iſabella*'s hands under *Charles* the Sixth? why not of *Catharine de Medicis*, whilſt the two Brothers *Francis* and *Charles* her Pupils were incircled with the Crown? why not out of the hands of *Mary*, *Louis* the Thirteenth being at this very time King?

Were the *Jews*, that I may go back to ſtories more ancient, blind, that they could not ſee the defects of Womens nature, in the Government of *Debora*, who triumphed over *Siſera*, and is ſufficiently commended in Holy Writ? Were the *Italians* blind under the Government of the moſt prudent *Amalaſincta*? the *Halicarnaſſians*, under that of the moſt gallant *Artemiſia*? the *Egyptians*, among whom heretofore their Women managed Law-Courts and buſineſs abroad, and the men lookt to home and minded huſwifery? and the *Æthiopians* under their *Nicaula*, whom being very deſirous of wiſdom, King *Solomon*, the wiſeſt man that has been ever ſince the world was, honourably entertain'd? were the *Aſſyrians*, under the Government of their magnificent *Semiramis*? the *Maſſagetes*, under that of the revengeful Dame *Thomyris*? the *Palmyrenes*, under that of the moſt chaſte *Zenobia*? and that I may make an end once, under that of other excellent women, all Nations whatever, none excepted but the *Franks*? who, as *Goropius* will have it, came to throw off and ſlight female Government upon this account, that in *Veſpaſian*'s time they had ſeen the affairs of their neighbours the *Bructeri* in *Eaſt Friſeland*, whilſt that ſcornful Hag *Velleda* ruled the roaſt, came to no good iſſue. Pomp. Mela, l. 1. c. 9. Gorop. in Francicis.

I do very well know, that our perjured Barons, when they reſolved to exclude Queen *Maud* from the *Engliſh* Throne, made this ſhameful pretence, "That it would be a ſhame, for ſo many Nobles to be ſubject "to a woman. And yet you ſhall not read, that the *Iceni* (our *Eſſex*-men, *&c.*) got any ſhame by that *Boadicia*, whom *Gildas* terms a Lioneſs, or that the *Brigantes* (i. e. *York-ſhire*-men, *&c.*) got any by *Chartiſmandua*. You will read, that they got glory and renown by them both.

Reader, thou canſt not here chuſe but think of our late Soveraign of Ever Bleſſed Memory, the Darling of *Britan*, Q. *ELIZABETH*, nor canſt thou, whoſoever thou art, but acknowledge, "That there "was not wanting to a Woman (what *Malmesbury* writes of *Sexburga* "the Queen Dowager of *Cenwalch* King of the *Weſt Saxons*) a great Spi-"rit to diſcharge the duties of the Kingdom; ſhe levied new Armies, Malmesb. geſt. reg. l. 1. c. 2.

"kept the old ones to duty; ſhe governed her Subjects with Clemency, "kept her Enemies quiet with threats; and in a word, did every thing "at that rate, that there was no other difference betwixt her and any "King in management, but her Sex. Of whoſe (I mean *Elizabeths*) ſuperlative and truly Royal Vertues a rare Poet, and otherwiſe a very Learned man, hath ſung excellently well,

Connub. Tam. & Iſs.

Si quaſdam tacuiſſe velim, quamcunque tacebo
Major erit: primos actus vetereſque labores
Proſequar? ad ſeſe revocant præſentia mentem.
Juſtitiam dicam? magis at Clementia ſplendet.
Victrices referam vires? plus vicit inermis.

'Tis pity theſe are not well rendred into *Engliſh*. However take them as they are in blank Verſe.

Should I in ſilence ſome her Vertues paſs,
Which e're I ſo paſs o'er, will greater be:
Shall I her firſt deeds and old facts purſue? foiles
Preſent affairs to them call back my mind.
Shall I her Juſtice in due numbers ſing?
But then her Clemency far brighter ſhines.
Or ſhall I her victorious Arms relate?
In peace unarm'd ſhe hath got more to th' State.

What did the *Germans* our Anceſtors? they thought there was in that Sex ſomething of Sanctity and foreſight, nor did they ſlight their counſels, nor neglect the anſwers they gave, when queſtions were put to them about matters of buſineſs; and as Superſtition increaſed, held moſt of them for Goddeſſes.

Let him then, whatever dirty fellow it was, be condemned to the Crows (and be hang'd to him) who is not aſhamed out of ancient Scrolls, to publiſh to the world, that they (Women) agree with Soldiers (Bully-Rocks and Hectors) mainly in this, "That they are continually "very much taken up with looking after their body, and are given to "luſt, that Souldiers themſelves are not, nor endeavour to be more "quick and ſudden in their Cheats and Over-reachings, that Soldiers "deceive people at ſome diſtances of time, but women lye alwayes at "catch, chouſe and pillage their Gallants all the wayes they can; "bring them into Conſumptions with unreaſonable ſittings up; And other ſuch like mad rude expreſſions he uſeth, not unfitting for a Profeſſor in *Bedlam* Colledge.

Plato de rep. lib. 5. Ariſt. Polit. l. 1. c. ult. Triſmegiſt.

Plato allowed Women to govern, nor did *Ariſtotle*, (whatever the Interpreters of his *Politicks* fooliſhly ſay) take from them that priviledge. Vertue ſhuts no door againſt any body, any Sex, but freely admits all. And *Hermes Triſmegiſtus* that Thrice great man in his *Pœmander* according to his knowledge of Heavenly concerns (and that ſure was great in compariſon of what the Owl-ey'd Philoſophers had) he aſcribes the myſtical name of *Male-Female* to the great Underſtanding, to wit, God, the Governour of the Univerſe.

They (the good women I have been ſpeaking of) from their Cradle (at this rate men commonly talk of them) do too much love to have the Reins of Government, and to be uppermoſt. Well! be it ſo, that they

they do love to govern? and who is it doth not love them? Now a ſin and ſhame be it for Lovers to grudge to their beloved, that which is moſt deſired and wiſhed by them: nor could I forbear out of conſcience with my ſuffrage, to aſſiſt as far as I could, that Sex, which is ſo great and comfortable an importance to mankind, ſo ſweet a refreſhment amidſt our ſharpeſt toils, and the viciſſitudes of life; and in a word, is the deareſt gift that Dame Nature could beſtow upon Man.

But let us now return to *Cæſar*'s *Gauls* again.

CHAP. XIII.

Their putting themſelves under protection by going into great mens ſervice. Their Coins of money, and their weighing of it. Some ſorts of fleſh not lawful to be eaten by them.

19. "VEry many of them, when they are oppreſt with Debt or "with great Taxes, or with the injurious oppreſſion of great "men, put themſelves out to ſervice to the Nobles. Over ſuch they "have the ſame Right or Authority, as Maſters have over their Ser-"vants or Slaves.

Theſe things following are expreſly related alſo of the *Britans* themſelves.

20. "They uſe Braſs Coin or Rings (ſome read it, Plates) of Iron "proportion'd to a certain weight, inſtead of money. But, (ſaith *Soli-*"*nus*, a more modern Hiſtorian) they diſlike and diſallow of Markets or "Fairs of Money; they give and take Commodities by way of "Barter. Solin. Polyhiſt. cap. 35.

Camden is of opinion, that the cuſtom of Coining Money, came in along with the *Romans* among the *Cattieuchlani*, that is, the people of *Buckinghamſhire*, *Bedfordſhire* and *Hartfordſhire*. He takes notice out of *William* the Conqueror's Book of Rates or *Dooms-Day* Book (which is ſeaſonable to mention upon this Head of Coins) that as amongſt the old *Romans*, ſo amongſt our Anceſtors, money was weighed (as *Gervaſe* of *Tilbury* alſo tells us) and ſo told out and paid down. Now they paid Cuſtoms to the *Romans*; and for this purpoſe they had Coins ſtamped and marked with various ſhapes of living Creatures and Vegetables, which ever and anon are digged up out of the ground. And we read in a very ancient Chronicle of the Monaſtery of *Abendon*, which had two Kings *Ciſſa* and *Ina* for its founders, that at the laying the firſt foundations, there were found very old Coins engraven with the Pictures of Devils and Satyrs. One may very well ſuppoſe them to be *Britiſh* Coins. V. Plut. quæſt. centuriat. Rom. 41. Br. Tuin. apolog. Oxon. l. 2. §. 77.

21. "They do not think it lawful to taſte of the fleſh of Hare, or "Hen, or Gooſe, and yet they keep theſe Creatures for pleaſure and "divertiſement ſake. Why they forbore only Hare, and Hen, and Gooſe, I am not able to give the reaſon. I perceive ſomething of *Pythagoras*, and ſomething of the *Jewiſh* Diſcipline mixt. For that Philoſopher of *Samos* abſtained from the eating of Fleſh, not in general from all, but with a certain choice from that of ſome particular Creatures. V. Plut. Symp. l. 4. c. 5. Laert. l. 8. Plut. ſymp. l. 8. c. 8.

CHAP.

CHAP. XIV.

Community of Wives among the Britans, *uſed formerly by other Nations alſo.* Chalcondylas *his miſtake from our Civil Cuſtom of Saluting.* *A rebuke of the fooliſh humour of Jealouſie.*

22. "THey have ten or twelve of them Wives in common amongſt "them, and eſpecially Brothers with Brothers, and Fathers "with their Sons; but what children are born of ſuch Mothers, they are "fathered upon them by whom they were firſt lain with, when they were Maids. O villany and ſtrange confuſion of the rights of Nature!

Georgic. 3. *Dii meliora piis, erroremque hoſtibus iſtum!*

which in Chriſtian Engliſh ſpeaks thus.

Good God! For th' pious better things devise,
Such Ill as this I wish not t' Enemies.

However let not this *Platonick* community of Wives be more reproach to the *Britans*, than that promiſcuous Copulation which was uſed by the *Thuſcans*, and before *Cecrops* his time (who for appointing Marriage, that is, joyning one Man and one Woman together, was termed Διφυὴς, *i.e.* as one may ſay *Two-ſhaped*) by the *Athenians*, (as *Theopompus*, *Suidas* and *Athenæus* report it) was to them. Beſides, *Euſebius* in his *Evangelical Preparation* writes, that our people for the moſt part were contented with one ſingle Marriage.

Athen. dipnoſ. l. 12. & 13. Suid. in Κέκροψ. Euſeb. præpar. Evang. l. 6.

Did not, may one think, *Chalcondylas* miſtake *Cæſar*'s meaning, who a hundred years ago and upwards ſetting himſelf to write Hiſtory at *Athens*, and peradventure over-careleſly drawing ancient Cuſtoms down to the laſt Age, ventured to affirm of the *Britans* his Contemporaries, "That when any one upon invitation enters the houſe of a "friend, the Cuſtom is, that he firſt lye with his friends Wife, and af-"ter that he is kindly entertained? Or did that officious kiſs, the Earneſt of welcome, which is ſo freely admitted by our Women from ſtrangers and gueſts, which ſome take particular notice of as the cuſtom of our Country, put a trick upon *Chalcondylas*, and bring him into that miſtake?

Apud Abrah. Ortel. in Theat. Mundi. Munſter. Bocæus, &c.

Theocr. Eidyll. 3. Ἔστι γὰρ ἐν κυνεοῖσι φιλάμασιν ἀλλὰ τίφυς.

ſayes *Theocritus* of old, that is,

In empty kiſſes there is ſwèt delight.

And,

And,

Qui vult cubare, pangit ſaltem ſuavium, Plaut. Curcul.

ſayes the Servant in *Plautus*,

He that would a woman win,
With a kiſs he doth begin.

And that other fellow,

Quæro deinde illecebram ſtupri, principio eam ſuavium poſco. And Id. Amphitr.
Et jam illud non placet principium de oſculo, ſayes jealous *Amphitruo* to Id. Caſinâ.
his wife *Alcumena*. And *Ageſilaus* miſtruſting his wanton Genius, refuſed the buſs or ſalute of a handſome beautiful youth. For as he ſayes, Plut. de aud. Poet.

——Parva leves capiunt animos, Ovid. de art. am. l. 1.

that is,

Small matters kindle the deſire,
And a looſe Spirit's ſoon on fire.

This our *Grecian* knew well enough, and perchance thought of that unlucky hint,

——Si non & cætera ſumpſit,
Hæc quoque, quæ ſumpſit, perdere dignus erat.

Moreover, that great Philoſopher of Lawyers *Baldus*, hath ſet it down for a rule, that the Fathers conſent and betrothal is ratified and made good by the Daughters admitting the Wooer to kiſs her. Which point of Law it would be very ridiculous to imagine ſhould concern us, with whom both Maids and married Women do eaſily afford, and civilly too, them that ſalute them a kiſs, not ſuch as *Catullus* ſpeaks of Billing like Doves, hard Buſſes or wanton Smacks, but ſlight modeſt chaſte ones, and ſuch as Siſters give to Brothers. Theſe civilities, when omitted, are alwayes ſigns of Clowniſhneſs; when afforded, ſeldom are accounted ſigns of Whoriſhneſs. Nor do the Husbands in this caſe (unleſs it be perhaps ſome Horn-mad-Cuckold) with a wrinkled Forehead ſhake their Bull-feathers, or ſo much as miſtruſt any thing as upon jealouſie of this cuſtom. Bald. l. 5. conſil. 78. Alber. Genuſ. de nupt. l. 2. c. 13.

It may be *Chalcondylas* being a little pur-blind, ſaw theſe paſſages as it were through a grated Lattice, and made ill uſe of his miſtake: I mean, whilſt he compared our *Britans*, who upon a Matrimonial confidence truſt their Mates honeſty, with the jealous *Italians*, *Venetians*, *Spaniards*, and even his own Countrey-men. Which people, it is a wonder to me, they ſhould ſo warily, with ſo much diligence and miſtruſt ſet pinfolds, cunning Spies and cloſe attendance, Locks and Keys, and Bars and Bolts upon their *Madonna*'s Chaſtity (moſt commonly in my conſcience all to no purpoſe) when that which he has ſaid is as good as Oracle, though a wanton one.

Quod

Ovid. amor. l. 2. eleg. 19. Id. l. 3. eleg. 4. Id. de remed. amor. l. 2.

Quod licet, ingratum eſt: quod non licet, acriùs urit.
Ferreus eſt, ſiquis, quod ſinit alter, amat.
Siqua, metu dempto, caſta eſt, ea denique caſta eſt:
Quæ, quia non liceat, non facit, illa facit.
Qui timet, ut ſua ſit, nequis ſibi ſubtrahat illam;
Ille Machaoniâ vix ope ſanus erit.

In Engliſh thus,

What's fræ, 's unpleaſant; what's not, modes deſire.
He's thick skull'd, who doth things allow'd admire.
Who, fear aſide, is chaſte, ſhe's chaſte indeed;
Who, cauſe ſhe can't, forbears, commits the deed.
Who's Wife miſtruſts, and plays the jealous Whelp,
Is mad beyond Phyſicians art and help.

Who does not know, that Natures byaſs runs to things forbidden? and he who attempts unlawful things, does more often loſe thoſe which are lawful. Marry! that free uſage of the hot Baths of *Baden* in *Germany*, Men and Women together, is much ſafer than being jealous.

Virg. in Ceiri.

——Quis non bonus omnia malit
Credere, quàm tanto ſceleri damnare puellam?

That is,

What good man would not take all in beſt ſenſe,
Rather by living undiſturb'd and fræ;
Than by diſtruſtful fooliſh Jealouſie
His Lady force to quit her Innocence?

But we have taken that pains upon a thing by the By, as if it were our proper buſineſs.

CHAP. XV.

An account of the Britiſh *State under the* Romans. Claudius *wins a Battel, and returns to* Rome *in Triumph, and leaves* A. Plautius *to order affairs. A Colony is ſent to* Maldon *in* Eſſex, *and to ſeveral other places. The nature of theſe Colonies out of* Lipſius. Julius Agricola's *Government here in* Veſpaſian's *time.*

Malmesb. de geſt. reg. l. 1. c. 1.

JUlius *Cæſar* gave a ſight of *Britanny* to poſterity, rather than made a full diſcovery or a delivery of it. However *Malmsbury* ſayes, "that he "compelled them to ſwear obedience to the *Latin* Laws, certainly he did ſcarce ſo much as abridge the inhabitants from the free uſe of their own Laws; for the very Tributes that were impoſed upon them, they in a ſhort time ſhook off, by revolting from the *Roman* yoke. The ſame liberty they uſed and enjoyed to all intents and purpoſes during *Auguſtus*, *Tiberius* and *Caligula*'s Reigns.

Aulus

Aulus Plautius as General by order of *Claudius Cæsar*, brought an Army into *Britany*. Ἦσαν γὰρ ἄλλοις (so saith *Dio*) βασιλεῦσι πειστεταγμένοι that is, *The inhabitants at that time were subject to divers Kings of their own.* He overcame in battel Prince *Cradock* and *Togodunus* the two Sons of King *Cunobellinus*; afterwards *Claudius* himself came over into the Island, fought a set battel; and having obtained the Victory, he took *Maldon* in *Essex*, the Royal City of *Cunobellinus*, disarmed the inhabitants, left the government of them, and the subduing of the rest of the people to *Plautius*, and went back himself to *Rome*, where he was honoured with a most splendid and stately Triumph. For this was he, of whom *Seneca* the Tragœdian speaks: Dio hist. Rom. l. 60.

Cuique Britanni terga dedêre,
Ducibus nostris ante ignoti,
Jurisque sui.—— Senec. in Octav. act.

which may be thus Englished,

To whom bold Britans turn'd their back,
T' our Captains formerly unknown,
And govern'd by Laws of their own.

The Island being reduced great part under the *Romans* power, and into a Lieutenancy, a Colony is brought down to *Maldon* (in *Essex*) as *Tacitus* and *Dio* has it, with a strong party of Veterans, and is planted up and down in the Countrey they had taken, "as a supply against those "that would rebel, and to train up their fellows or Allies to the duties "of the Laws. An old Stone speaks thus of that Colony, Tac. annal. l. 12. Dio hist. l. 60.

CN. MUNATIUS M. F.
PAL. AURELIUS.
BASSUS PROC.
AUG.
PRÆF. FABRO. PRÆF. COH. III. SAGITARIORUM. PRÆF. COH. ITERUM. II. ASTURUM. CENSITOR. CIVIUM. ROMANORUM. COLONIÆ. VICTRICENSIS. QUÆ. EST. IN. BRITANNIA. CAMALODUNI. Camden. & Lipsi. ad l. 12. Tac. num. 75.

Besides, there was a Temple built and dedicated to *Claudius Ara* (or as *Lipsius* reads it *Arra*) *Æternæ dominationis*; that is, the Altar or Earnest of an eternal Government. But you will say, all this makes little to our purpose: yes, very much; as that which brings from abroad the *Roman* Orders, Laws, Fashions, and every thing into *Britany*. Near St. *Albans*, a Town in *Hartfordshire*, there was sure enough the seat of *Cassibellinus* called *Verulams*, and the Burghers, as we learn from *Agellius*, were Citizens of *Rome* infranchized, out of their Corporations, using their own Laws and Customs, only partaking the same honorary priviledge with the people of *Rome*: but we have the Colony of *Maldon* in *Essex*, which upon another nearer account had all the Rights and Orders of the people of *Rome* derived to it from the freedom of that City, and was not at its own disposal, or to use its own Laws. And Agell. l. 16. c. 13.

the like was practiſed in this Iſland in more than one place. The Reverſe of *Severus* the Emperours Coyn ſhews it.

Camden. COL. EBORACUM. LEG. VI. VICTRIX.

and the Coyn of *Septimius Geta* on either ſide.

COL. DIVANA. LEG. XX. VICTRIX.

This old *Divana* (which is the very ſame with *Deunana* in *Ptolomy*) if you make it *Engliſh*, is *Cheſter* the chief City of the *Cornavians*, that is, the people of *Cheſhire*, *Staffordſhire*, *Shropſhire*, *&c.* Again, there is a piece of an old Stone in the Walls of *Bath* in *Somerſetſhire* near the North Gate has this Inſcription upon it,

DEC. COLONIÆ. GLEV. VIXIT.
ANN. LXXXVI.

Colonia caſtri, *whence the River called* Coln. Senec. ad Alb. c. 7.

Glevum was that then which *Gloceſter* is now. It may be *Colcheſter* had the ſame right of priviledge, unleſs you had rather derive its name from the River *Coln* that runs aſide it. In a word (ſayes *Seneca* to *Albina*) "How many Colonies has this people of ours ſent into all Pro-"vinces? Where ever the *Roman* conquers, he dwells. See what abundance there was of them in *Britiſh* Province; whoſe form of Government, and other Laws, that they were different from that of the *Britans*, we may plainly perceive from that very form of their conſtitution after their detachment; which I ſhall preſent you with out of that famous Antiquary, and every way moſt Learned and Celebrious perſon *Juſtus Lipſius*.

Their manner and method was (ſayes he) "That the Lands ſhould "be divided to man by man, and that by three grave diſcreet perſons, Lipſ. de mag. Rom. l. 1. c. 5. "whom they uſed to chuſe for this purpoſe, who did ſet out their par-"ticular Seats and Grounds, and the Town it ſelf (if there were one to "be built) and preſcribed them Rules and Rights, and the form as it "were of a new Common-wealth: Yet in that manner, that all things "might bear a reſemblance of *Rome* and the Mother City; and that in "the very places themſelves the Courts of Law, the Capitols, the "Temples, the State-houſes or Town-halls might be according to that "model, and that there might be in the Government or Magiſtracy "two perſons as Bailiffs in moſt places, like the two *Conſuls* at *Rome*; "in like manner Surveyors and Scavengers, Aldermen of the Wards and "Headboroughs, inſtead of a Senate or Common Council as we may call Gild. in Epiſt. de excid. Brit. "it.) This is *Lipſius* his account; ſo that *Beatus Gildas* is not much out of the way, when he ſayes, it was reckoned not *Britannia*, but *Romania*. And an ancient Copy of Verſes, which *Joſeph Scaliger* has reſcued out of its ruſt and mouldineſs, has it:

Mars pater, & noſtræ gentis tutela Quirine,
Et magno poſitus Cæſar uterque polo;
Cernitis ignotos Latiâ ſub Lege Britannos, &c.

that

that is, in Engliſh,

Sire Mars, and Guardian of our State
Quirinus bight after thy ſate,
And Cæſars both plac'd near the Pole
With your bright Stars ye do behold,
And th' unknown Britans aw,
T' obſerve the Roman Law.

The ſtately Seraglio or Building for the Emperours Women at *Venta Belgarum* (a City at this day called *Wincheſter*) and other things of that kind I let paſs. Notitia Provinc.

In the time of the Emperours *Veſpaſian*, *Titus* and *Domitian*, *Julius Agricola*, *Tacitus* his Wives Father, was Lord Deputy Lieutenant here. He encouraged the Barbarous people to Civil faſhions, inſomuch that they took the *Roman* habit for an honour, and almoſt every body wore a Gown; and as *Juvenal* has it in his Satyr, Tacit. vit. Agric.

Gallia Cauſidicos docuit facunda Britannos. Juvenal. Sat. 6.

The Britiſh Lawyers learnt of yore,
From the well-ſpoken French their lore:
T' imply, hereafter we ſhould ſee
Our Laws themſelves in French would be.

CHAP. XVI.

In Commodus *his time King* Lucy *embraces the Chriſtian Religion, and deſires* Eleutherius *then Pope, to ſend him the* Roman *Laws. In ſtead of Heathen Prieſts, he makes three Arch-Biſhops and twenty eight Biſhops. He endows the Churches, and makes them Sanctuaries. The manner of Government in* Conſtantine's *time, where ends the* Roman *account.*

IN *Commodus* the Emperours time the Light of the Goſpel ſhone afreſh upon the *Britans*. *Lucius* the firſt King of the Chriſtians (for the *Romans*, as in other places, ſo in *Britany*, made uſe of even Kings for their inſtruments of ſlavery) by the procurement of *Fugatius* and *Damianus* did happily receive from Pope *Eleutherius* the Seal of Regeneration (that is, Baptiſm) and the Sacred Laws of eternal ſalvation. He had a mind alſo to have the Civil Laws thence, and deſired them too. *Ovid* long ſince had ſo propheſied of *Rome*: Platin. in vit. Eleutherii.

Juráque ab hâc terrâ cætera terra petet. Ovid. Faſt. l. 1.

that is,

And from this Countrey every other Land
Their Laws ſhall fetch, and be at her command.

Jo. Fox Hiſt. Eccleſ. l. 1.

Now *Eleutherius* wrote him this anſwer: "You have deſired of us, "that the *Roman* and *Cæſarean* Laws may be ſent over to you; that you "may, as you deſire, uſe them in your Kingdom of *Britanny*. The *Ro-* "*man* and *Cæſarean* Laws we may at all times diſprove of, but by no "means the Law of God. For you have lately through Divine mercy "taken upon you in the Kingdom of *Britanny* the Law and Faith of "Chriſt; you have with you in the Kingdom both pages of Holy Writ, "(to wit, the Old and New Teſtament). Out of them, in the name "and by the favour of God, with the advice of your Kingdom, take "your Law, and by it through Gods permiſſion, you may govern your "Kingdom of *Britanny*. Now you for your part are Gods Vicegerent "in your Kingdom.

Howſoever by injury of time the memory of this great and Illuſtrious Prince King *Lucy* hath been imbezill'd and ſmuggled, this upon the credit of the ancient Writers appears plainly, that the pitiful fopperies of the Pagans, and the Worſhip of their Idol-Devils did begin to flag, and within a ſhort time would have given place to the Worſhip of the true God, and that Three *Arch-Flamens* and Twenty Eight *Flamens*, *i. e.* Arch-Prieſts, being driven out, there were as many Arch-Biſhops and Biſhops put into their rooms (the Seats of the Arch-Biſhops were at *London*, at *York* and at *Caerleon* in *Wales*) "to whom, as alſo to other "Religious perſons, the King granted Poſſeſſions and Territories in "abundance, and confirmed his Grants by Charters and Patents. But "he ordered the Churches (as he of *Monmouth* and *Florilegus* tell us) "to be ſo free, that whatſoever Malefactor ſhould fly thither for refuge, "there he might abide ſecure, and no body hurt him.

Zoſim. l. 2.

In the time of *Conſtantine* the Emperour (whoſe Pedigree moſt people do refer to the *Britiſh* and Royal Blood) the Lord Preſident of *France* was Governour of *Britanny*. He together with the reſt, thoſe of *Illyricum* or *Slavonia*, of the *Eaſt* and of *Italy*, were appointed by the Emperour. In his time the Lord Deputy of *Britanny*, (whoſe Blazonry was a Book ſhut with a green Cover) was honoured with the Title of *Spectabilis*. There were alſo under him two Magiſtrates of Conſular Dignity, and three Chief Juſtices (according to the diviſion of the Province into five parts) who heard and determined Civil and Criminal Cauſes.

Notit. Provinc. utr. Imper. l. 1. comm. c. 5. & l. 2. comm. Pancir. c. 69.

And here I ſet up my laſt Pillar concerning the *Britans* and the *Roman* Laws in *Britanny*, ſo far forth as thoſe Writers which I have, do ſupply me with matter.

CHAP.

CHAP. XVII.

The Saxons *are ſent for in by* Vortigern *againſt the* Scots *and* Picts, *who uſurping the Government, ſet up the Heptarchy. The* Angles, Jutes, Friſons, *all called* Saxons. *An account of them and their Laws, taken out of* Adam *of* Bremen.

AFterwards the *Scots* and *Picts* making incurſions on the North, and daily havock and waſte of the Lands of the Provincials, (that is, thoſe who were under the *Roman* Government) they ſend to deſire of the *Romans* ſome Auxiliary Forces. In the mean time, *Rome* by a like misfortune, was threatned with imminent danger, by the fury of the *Goths*: all *Italy* was in a fright, in an uproar. For the maintaining of whoſe liberty, the Empire being then more than ſinking, was with all its united ſtrength engaged and ready prepared. So this way the *Britans* met with a diſappointment. Wherefore *Vortigern*, who was Governour in Chief, ſent for ſupplies from the neighbouring *Germans*, and invited them in. But according to the Proverb, *Carpathius leporem*; He caught a *Tartar*: for he had better have let them alone where they were. Upon this account, the *Saxons*, the *Angles*, the *Jutes*, the *Frieſlanders* arrive here in their Gally-Foiſts in the time of *Theodoſius* the younger. At length being taken with the ſweetneſs of the ſoil (a great number of their Countrey-men flocking over after them, as there were at that time fatal flittings and ſhiftings of quarters all the World over) and ſpurred on with the deſire of the chief command and rule, having ſtruck up a League with the *Picts*, they raiſe a ſad and lamentable War againſt their new entertainers, in whoſe ſervice they had lately received pay: and to make ſhort, in the end having turned the *Britans* out of their Anceſtors Seats they advanced themſelves into an *Heptarchy* of *England*, ſo called from them.

Albeit they paſs by various names, yet in very deed they were all of them none other but *Saxons*. A name at that time of a large extent in *Germany*; which was not, as later Geographers make it, bounded with the Rivers of the *Elb*, of the *Rhine* and the *Oder*, and with the Confines of *Heſſen* and *Duringen*, and with the *Ocean*; but reached as far as into the *Cimbrian Cherſoneſus* now called *Jutland*. It is moſt likely, that thoſe of them that dwelt by the Sea ſide, came over by Ship into *Britanny*. To wit, at firſt *Horſus* and *Hengiſtus* came over out of *Batavia*, or the Low Countreys, with a great company of *Saxons* along with them; after that out of *Jutland* the *Jutes* (for *Janus Douza* proves, that the *Danes* under that appellation ſeiſed our Shores, in the very beginning of the *Saxon* Empire:) out of *Angela*, according to *Camden* about *Flemsburg* a City of *Sleſwick*, came the *Angles*; out of *Friſeland* (*Procopius* is my Author) the *Frizons*. One may without any wrong call them all *Saxons*; unleſs *Fabius Quæſtor Æthelwerd* alſo did his Nation injury, by calling them ſo. He flouriſhed Six hundred and fifty years ago, being the Grand-child or Nephew of King *Æthelulph*, and in his own words diſcourſes, "That there was alſo a people of the *Saxons* all along "the Sea-coaſt from the River *Rhine* up to the City *Donia*, which is "now commonly called **Denmark**. For it is not proper here to think

Ja. Douz. annal. Holland. l. 1. & 6.

Procop. bell. Goth. l. 4.

Æthelwerd. lib. 1. fo. 474.

of

of *Denmark* in the neighbouring Territories of *Utrecht* and *Amſterdam*, by reaſon of the narrowneſs of that tract.

Adam Brem. hiſt. eccleſ. Brem. & Hamburg. c. 5. ex bibliothecâ Henr. Kanzovii.

Thoſe few Obſerves then, which *Adam* of *Bremen* hath copied out of *Einhard* concerning the *Saxons*, foraſmuch as our Ancient *Saxons* I ſuppoſe, are concerned in them, I here ſet down in this manner and order.

CHAP. XVIII.

The Saxons *diviſion of their people into four ranks. No perſon to marry out of his own rank. What proportion to be obſerved in Marriages according to Policy.* Like to like *the old Rule. Now Matrimony is made a matter of money.*

23. THe whole Nation conſiſts of four different degrees or ranks of men; to wit, "of Nobles, of Free-men born, of Free-men "made ſo, and of Servants or Slaves. And *Nithard* ſpeaking of his own time, has divided them into **Ethelings**, that is, Nobles, **Frilings**, that is, Free-men, and **Lazzes**, that is, Servants or Slaves.

Nithard. l. 4.

It was enacted by Laws, "That no rank in caſes of Matrimony do "paſs the bounds of their own quality; but that a Noble-man marry "a Noble-woman, a Free-man take a Free-woman, a Bond-man made "Free be joyned to a Bond-woman of the ſame condition, and a Man-"ſervant match with a Maid-ſervant. And thus in the Laws of *Henry* Duke of *Saxony*, Emperour Elect, concerning *Juſts and Tournaments*, "When any Noble-man had taken a Citizen or Countrey-woman to "Wife, he was forbid the exerciſe of that ſport to the third Genera-"tion, as *Sebaſtian Munſter* relates it. The Twelve Tables alſo forbad the marriage of the *Patricii* or Nobles with the Plebeians or Commons; which was afterwards voided and nulled by a Law which *Canuleius* made, when he was Tribune of the people. For both Politicians and Lawyers are of opinion, That in marriages we ſhould make uſe of not an *Arithmetical* proportion, which conſiſts of equals; nor of a *Geometrical* one, which is made up of likes; but of a *Muſical* one, which proceeds from unlike notes agreeing together in ſound. Let a Noble-man that is decayed in his eſtate, marry a Commoner with a good fortune; if he be rich and wealthy, let him take one without a fortune: and thus let *Love*, which was begot betwixt *Wealth* and *Poverty*, ſuite this unlikeneſs of conditions into a ſweet harmony; and thus this diſagreeing agreement will be fit for procreation and breed. For he had need have a good portion of his own, and be nearer to *Craſſus* than *Irus* in his fortunes, who, *by reaſon of the many inconveniencies and intolerable charges of Women, which bring great Dowries*, doth, with *Megadorus* in *Plautus*, court a Wife without a Portion; according to that which *Martial* ſayes to *Priſcus*:

Munſt. Coſmog. l. 3.

Plut. in ſympoſ.

Plaut. In Aulul. act. 3.

Uxorem

Uxorem quare locupletem ducere nolim
Quæritis? Uxori nubere nolo meæ.
Inferior Matrona ſuo ſit, Priſce, Marito:
Non aliter fiunt fœmina virque pares.

Martial. l. 8. Epig. 12.

Which at a looſer rate of Tranſlation take thus,

Should I a Wife with a great fortune wed,
You'l ſay, I ſhould be ſwætly brought to bed.
Such fortune will my Liberty undo.
Who brings Eſtate, will wear the Brætches too.
Unhappy match! where e're the potent Bride
hath the advantage wholly on her ſide.
Bleſt pairs! when the Men ſway, the Women truckle,
There's good agrëement, as 'twixt Thong and Buckle.

And according to that of the *Greek* Poet,

——Τλῶ χὴ σευτὸν ἴλε.

Callimach. epig. 1.

Take, if you'l be rul'd by me,
A Wife of your own degrëe.

But there is little of our Age faſhioned to the model of this ſenſe: Height of Birth, Vertue, Beauty, and whatſoever there was in *Pandora* of Good and Fair, do too too often give place to Wealth; and that I may uſe the Comedians word, to a Purſe crammed with Money. And as the merry *Greek* Poet ſayes,

Plaut. in Aſinar.

Γένος ἐδὲν εἰς ἔρωτα,
Σοφίη, τέχνη πατεῖ,
Μόνον ἀργυρον βλέπουσιν.

Anacreon. carm. εἰς Ἔρωτα.

To be Noble or high-born,
Is no argument for Love:
Good Parts of Breeding lye forlorn;
'Tis Money only they approve.

I come back now to my friend *Adam*.

CHAP.

CHAP. XIX.

The Saxons *way of judging the Event of War with an Enemy. Their manner of approving a propoſal in Council, by clattering their Arms. The Original of* **Hundred-Courts.** *Their dubbing their Youth into Men. The priviledge of young Lads Nobly born. The* **Morganheb** *or Wedding-dowry.*

Ex Tacit.

24. "THey take a Priſoner of that Nation, with which they are to "have a War, by what way ſoever they can catch him, and "choſe out one of their own Countrey-men; and putting on each of "them the Arms of their own Countrey, make them two fight toge- "ther, and judge of the Victory, according as the one or the other of "them ſhall overcome. This very thing alſo *Tacitus* himſelf hath, to whom *Einhard* ſends his Reader. For though he treat in general of the *Germans*, yet nevertheleſs without any queſtion, our *Saxons* brought over along with them into this Iſland very many of thoſe things, which are delivered to us by thoſe who have wrote concerning the Cuſtoms of the *Germans*. Among which, take theſe following.

25. "In Councils or publick Aſſemblies, the King or Prince, (*i.e.* a "chief perſon) according as every ones Age is, according to his Nobi- "lity, according to his Reputation in Arms, according to his Eloquence, "has audience given him, where they uſe the authority of perſwading, "rather than the power of commanding. If they diſlike what he ſayes, "they diſapprove it with a Hum and a rude noiſe. If they like the "propoſal, they ſhake and ruſtle their Spears or Partiſans together. "It is the moſt honourable kind of aſſent, to commend the Speaker with "the clattering of their Arms. From hence perhaps aroſe the ancient right of **Wapentakes.**

26. "There are alſo choſen at the ſame Councils or Meetings, chief "perſons (as Juſtices) to adminiſter Law in the ſeveral Villages and "Hamlets. Each of thoſe have a hundred Aſſociates out of the Com- "monalty for their Counſel and Authority. This is plainly the pour- traict of our **Hundreds**, which we ſtill have throughout the Counties of *England*.

27. "They do nothing of publick or private affair, but with their "Arms on; but it is not the cuſtom for any one to wear Arms, before "the City or Community approve of him as ſufficient for it. Then "in the Council it ſelf, either ſome one of the Princes or chief perſons, "or the Father of the young man or ſome Kinſman of his in token of "reſpect, give him a Shield and a Partiſan. This with them ſtands "for the Ceremony of the Gown; this the firſt honour of youth arriving "at manhood; before this be done, they ſeem but a part of the Fami- "ly; but after this is over, they are a part of the Common-wealth.

Cæſ. de bell. Gall. l. 6.

The right ancient pattern of dubbing *Knights*, if any where elſe to be found. *Julius Cæſar* ſayes almoſt the very ſame thing of the *Gauls*. "They do not ſuffer their Children, to come in publick to them, till "they be come to Age, that they be able to undergo the Duties of War.

28. "A

28. "A remarkable Nobleneſs of deſcent, or the high merits of their "Fathers, procure even to young Lads the dignity and eſteem of a "Prince. For, as the *Philoſopher* ſayes, We owe this regard to Vertues, that we reſpect them, not only whilſt preſent, but alſo when they are taken away out of our ſight; and in the Wiſe mans account, *The glory of Parents, is the honour of their Children.* Senec. de benefic. l. 4. c. 30. Proverb. 17.

29. "The Wife doth not bring the Husband a Portion; but the "Husband gives the Wife a Dowry. Contrary to what the *Roman* Law ſaith, That cuſtom is ſtill in uſe with the *Engliſh*, as Mozgangbeb in other places.

CHAP. XX.

Their ſevere puniſhments of Adultery, by maiming ſome parts of the body. The reaſon of it given by Bracton. *The like practiſed by* Danes *and* Normans.

30. "THe Husband if his Wife playes the Whore, cuts off her hair, "ſtrips her naked, and turns her out of doors in preſence of her "Kindred, and drives her through the Streets, laſhing or beating her "as ſhe goes along. They were formerly in this Northern part of the World, moſt ſevere puniſhers of Adultery, and they had ſuch Laws as were

———*ipſis Marti Veneriquè timenda*; Juvenal. Sat.

that is, ſuch as would

Put Mars and Venus in a trance
Of fear, amidſt their dalliance.

King *Knute* ordered, That a Wife, who took another Paſſenger on board her than her Husband, and Canut. legi can. 50.

Πολλάκις ἐκ νυκτῶν ἄλλον ἔχει λιμένα.

Oft times ith' nights away ſhe hies,
And into other harbour flyes. Theognis.

(Well ſpeed thee and thine, fair *Venus*; nor do I willingly bring theſe ill tidings to thy tender Ducklings.) ſhould have her Noſe and ears cut off.

I remember, *Antinous* in *Homer* threatens *Irus* with the chopping off his Noſe, Ears and Privities; and *Ulyſſes* inflicts that very puniſhment upon his Goat-herd *Melanthius*, for his having been too officious in his pimping attendance upon the Gallants, that haunted the houſe in his abſence. How any one ſhould deſerve this penalty, which ſo disfigures Nature, I do not yet ſufficiently underſtand. Odyſſ. 18. & 22.

In Allegoriis Homeric. *Heraclides Ponticus* informs us, That Law-makers were wont to maim that part eſpecially which committed the miſdemeanour. In teſtimony of this, he mentions *Tytius* his Liver as the Shop and Work-houſe of Luſt; and it were no hard matter to bring in other more pertinent inſtances; and

Pereant partes, quæ nocuere.

ſaith ſome Poet,

The parts that did the hurt,
Let them e'en ſuffer for't.

However it was not *Melanthius* his Ears, and by no means his Noſe that offended; no nor the good Wives neither that commits the fact: as *Martial* the merry Wag tells a certain Husband,

Martial. l. 3. Epig. 43. *Quis tibi perſuaſit nares abſcindere mœcho?*
Non hâc peccata eſt parte, marite, tibi.

that is, with modeſty to render it,

What made thee, angry man, to cut
The Noſe of him, that went to rut?
'Twas not that part, that did th' offence:
Therefore to puniſh that, what ſenſe?

But who doth not ſee, that a Woman hath no other parts of her body ſo lyable to maiming or cutting off? Both thoſe parts make much for the ſetting her off; nor are there any others in the whole outward frame of the *Microcoſm*, which being cut off, do either more diſparage beauty, or withal leſs afflict the animal vertue, as they call it, by which life is maintain'd. Now for thoſe, who of old time did unluckily, that is, without the favour of thoſe Heathen Gods *Prema* and *Mutinus*, to whoſe ſervice they were ſo addicted, offer violence to untainted chaſtity; "the loſs of members did await the luſt of ſuch perſons, "that there might be member for member (they are the words of *Henry Bracton*, a very ancient Writer of our Law, and they are clear teſtimonies, that the *Engliſh* have practiſed the Law of like for like) *quia virgo, cùm corrumpitur, membrum amittit, & ideò corruptor puniatur in eo in quo deliquit: oculos igitur amittat propter aſpectum decoris, quo virginem concupivit; amittat & teſticulos, qui calorem ſtupri induxerunt.* So long ago,

Bracton. de Coronâ l. 3. c. 28.

An. 18 Ed. 3. fol. 20. à Briton. cap. 25.

Ovid. Metamor. l. 7. *Aut linguam aut oculos aut quæ tibi membra pudorem*
Abſtulerant, ferro rapiam.

ſayes *Progne* to her Siſter *Philomele*, ſpeaking of the filthy Villain *Tereus*, who had raviſhed her,

I'le cut out his eyes or tongue,
Or thoſe parts which did thee the wrong.

and

and *Plautus* in his Play called *Pœnulus*, *Sy. Facio quod manifeſto mœchi haud ferme ſolent. Mi. Quid id eſt? Sy. Refero vaſa ſalva.*

I remember I have read that *Jeoffry de Millers* a Nobleman of *Norfolk*, for having inticed the Daughter of *John Briton* to an Aſſignation, and ingaged her with venereal pledges; being betrayed and trepann'd by the Baggage, underwent this execution; and ſuffered beſides, whatſoever a Fathers fury in ſuch a caſe would prompt him to do: But withal, that King *Henry* the third was grievouſly offended at it, diſ-inherited *Briton*, baniſhed him, and gave order by Proclamation, that no one ſhould preſume, unleſs it were in his Wives caſe, to do the like. But theſe paſſages are of later date, and ſince the *Normans* time and from them; unleſs you will bring hither that which we meet with in *Alured*'s Law concerning a Man and a Maid-ſervant. Matth. Paris in H. 3. pag. 1000. Vid. l. 2. art. 8. Alured. leg. can. 25.

From whence we ſlide back again to *Tacitus*.

CHAP. XXI.

The manner of Inheriting among them. **Were-gild** *or Head-mony for Murder.* *Of deadly Feuds.* *Of* **Were-gild** *or Head-mony for Murder.* *The Nature of Country-Tenures and Knights Fees.*

31. "EVery ones Children are their Heirs and Succeſſors, and there "was no Will to be. Nor was it lawful with us down to our Grandfathers time, to diſpoſe of Country Farms or Eſtates by *Will*, unleſs it were in ſome *Burroughs*, that had a peculiar Right and Priviledge of their own. "If there be no Children, then, ſays he, the next of kin "ſhall inherit; Brethren, or Uncles by the Fathers or Mothers ſide. Thoſe of the aſcending Line are excluded from Inheritances, and here appears the preference of the Fathers ſide: A Law at this very day uſual with the Engliſh.

32. "To undertake the Enmities rather than the Friendſhips, whether "of ones Father or Kinſman, is more neceſſary. Capital enmities, which they call **Deadly Feuds**, are well known to our Northern people. "Nor do they hold on never to be appeaſed: For even Murder is expia-"ted by a certain number of ſome head of Cattel, and the whole Family "of the murdered Perſon receives ſatisfaction. Murders formerly were bought off with Head-mony called ꝑeꝛgilꝺ; though one had killed a Nobleman, nay the King himſelf, as we may ſee in *Athelſtan's* Conſtitutions: But good manners, I ſuppoſe, have prevailed above Laws.

33. "The Lord impoſes upon his Tenant a certain quantity of Corn "or Cattel, or Clothes. We ſee here clearly enough the nature of Country Land-holders, *Fees* or Tenures. As to military or Knights Fees, give me leave to ſet that down too. *Dionyſius Halicarnaſſeus* gives us a very ancient draught and model of them in the *Trojans* and *Aborigines*: *Florus* in the *Cymbrians*, and *Lampridius* in *Alexander Severus*. Both the Northern people and the *Italians* do owe them to the *Huns* and *Lombards*; but theſe later according to a more modern form.

Let theſe things ſuffice out of *Cornelius Tacitus*, which belong to this Head.

Dion. Halic. lib. 1. Flor. Hiſt. Rom. l. 3. c. 3. Lamprid. V. Bodin. de rep. l. 2. c. 2. & Franc. Hotom. diſp. feud. cap. 2.

CHAP.

CHAP. XXII.

Since the return of Chriſtianity into the Iſland, King Ethelbert's *Law againſt Sacriledge. Thieves formerly amerced in Cattel. A blot upon* Theodred *the Good, Biſhop of* London, *for hanging Thieves. The Country called* **Engelond** *by Order of King* Egbert, *and why ſo called. The Laws of King* Ina, Alfred, Ethelred, *&c. are ſtill to be met with in* Saxon. *Thoſe of* Edward *the Confeſſor, and King* Knute *the* Dane, *were put forth by* Mr. Lambard *in his* Archæonomia.

BEfore that the Chriſtian Doctrine had driven out and baniſhed the *Saxon* Idolatry, all theſe things I have hitherto been ſpeaking of, were in uſe. *Ethelbert* (he that was the firſt King, not only of *Kent*, but of all *England*, except *Northumberland*) having been baptized by *Auſtin* the Monk, *the Apoſtle*, as ſome call him, *of the Engliſh*) "amongſt "other good things which by Counſel and Grant he did to his Nation, "('tis venerable *Bede* ſpeaks theſe words) he did alſo with the advice of "wiſe men, appoint for his peoples uſe the orders of their proceedings "at Law, according to the examples of the *Romans*. Which having "been written in the *Engliſh* tongue (ſays he) are hitherto, or to this "time kept and obſerved by them. Among which orders or decrees he "ſet down in the firſt place, after what manner ſuch an one ſhould make "amends, who ſhould convey away by ſtealth any of thoſe things that "belonged to the Church, or to a Biſhop, or to the reſt of the Orders. In the Laws of ſome that came after him, as thoſe of King *Alured* (who cull'd out of *Ethelbert*'s Acts to make up his own) and thoſe of King *Athelſtan*, Thieves make ſatisfaction with mony; accordingly as *Tacitus* ſays of the *Germans*, "That for lighter offences thoſe that were convicted are "at the rate of their penalties amerced ſuch a number of Horſes or other Cattel. For, as *Feſtus* hath it, before Braſs and Silver were coyned, by ancient cuſtom they were fined for their faults ſo much Cattel: But thoſe who medled with any thing ſacred, we read had that hand cut off with which they committed the theft.

Bed. hiſt. Eccleſ. l. 2. c. 5.

Feſt. verbo Pecul. & verbo Ovibus.

Well! but am I miſtaken, or was Sacriledge even in the time of the *Saxon* Government puniſht as a Capital crime? There is a paſſage of *William* of *Malmsbury*, in his Book *de Geſtis Pontificum*, that inclines me to think ſo. Speaking of *Theodred*, the Biſhop of *London* when *Athelſtan* was King, he ſays, "That he had among the common people got the "ſirname of *Theodred the Good*; for the eminence of his virtues: Only in "one thing he fell ſhort, which was rather a miſtake than a crime, "that thoſe Thieves which were taken at St. *Edmunds*, whom the holy "Martyr had upon their vain attempts tied with an inviſible knot (he means St. *Edmundsbury* in *Suffolk*; which Church theſe Fellows having a deſign to rob, are ſaid by miracle to have ſtood ſtill in the place, as if they had been tied with Cords: Theſe Thieves I ſay) "were by his means or "ſufferance given up to the ſeverity of the Laws, and condemned to the "Gallows or Gibbet. Let not any one think that in this middle Age, this *Gallows* or *Gibbet* I ſpoke of, was any other thing than the *Roman Furca*, upon

V. Inæ leg. cap. 13.

Malmsb. de geſt. Pontif. l. 1. Ranulph. Higden in Polychron. Joan. Carnotenſis de nugis curial. l. 5. c. 17. Caxt. cap. 96.

upon which people hang and are ſtrangled till they die.

34. "*Egbert* King of the *Weſt-Saxons* (I make uſe of *Camdens* words) "having gotten in four Kingdoms by conqueſt, and devour'd the other two "alſo in hope, that what had come under the Government of one, "might likewiſe go under one name; and that he might keep up the "memory of his own people the *Angles*, he gave order by Proclamation, "that the *Heptarchy* which the *Saxons* had poſſeſt, ſhould be called **England**. *John Carnotenſis* writes, that it was ſo called from the firſt coming in of the *Angles*; and another ſome body ſays it was ſo named from *Hengiſt* a *Saxon* Prince.

There are a great many Laws of King *Ina*, *Alfred*, *Edward*, *Athelſtan*, *Edmund*, *Edgar*, *Ethelred*, and *Knute* the *Dane*, written in the *Saxon* language; which have laſted till theſe very times. "For King *Knute* "gave order ('tis *William* of *Malmsbury* ſpeaks) that all the Laws which "had been made by former Kings, and eſpecially by his Predeceſſor *E*-"*thelred*, ſhould under pain of his diſpleaſure and a Fine, be conſtantly ob-"ſerved: For the keeping of which, even now in the time of thoſe who "are called the *Good*, people ſwear in the name of King *Edward*; not "that he appointed them, but that he obſerved them. The Laws of *Edward*, who for his piety has the ſirname of *Confeſſor*, are in Readers hands. Theſe of the *Confeſſor* were in *Latin*; thoſe others of *Knute* were not long ſince put into *Latin* by *William Lambard* a learned man, and one very well vers'd in Antiquity; who has recovered them both, and publiſhed the *Saxon* Original with his Tranſlation over againſt it, Printed by *John Day* at *London*, *Anno* 1567. under the Title of *Archæonomia*, or a Book concerning the ancient Laws of the *Engliſh*. May he have a good harveſt of it as he deſerves.

From Hiſtorians let us borrow ſome other helps for this ſervice.

CHAP.

CHAP. XXIII.

King Alfred *divides* England *into Countyes or Shires, and into Hundreds and Tythings. The Original of* Decenna *or* **Court-leet, Friburg,** *and* **Mainpaſt.** *Forms of Law, how People were to anſwer for thoſe whom they had in* **Borgh** *or* Mainpaſt.

35. "INgulph the Abbot of *Crowland*, writing of King *Alfred* ſays: That he "was the firſt of all that changed the Villages or Lordſhips and Pro- "vinces of all *England* into *Counties* or *Shires*. Before that it was reckoned and divided according to the number of *Hides* or Plough-lands by little diſtricts or quarters. He divided the Counties into *Hundreds* and *Tythings*; (it was long before that *Honorius*, Arch-Biſhop of *Canterbury*, had parted the Country into *Pariſhes*; to wit, *Anno* 636.) that every "Native home-born lawful man, might be in ſome Hundred and Tything "(I mean whoſoever was full twelve years of age) and if any one ſhould "be ſuſpected of Larceny or Theft, he might in his own Hundred or "Ward, being either condemned or giving ſecurity (in ſome Manuſcripts "it is being acquitted) he might either incur or avoid the deſerved pe- "nalty. *William* of *Malmsbury* adds to this, that he that could not find "ſecurity was afraid of the ſeverity of the Laws; and if any guilty per- "ſon, either before his giving ſecurity or after, ſhould make his eſcape, "all of that Hundred and Tything ſhould incur the Kings fine.

Rotulus Wintoniæ.

Hiſt. Cantuarienſis.

Canut. leg. 19.

Here we have the Original of *Decenna* or a *Court-leet*, of *Friburg*, and perhaps of *Mainpaſt*: Which things though grown out of uſe in the preſent Age; yet are very often mentioned, not only in the *Confeſſors* Laws, but alſo in *Bracton* and in other Records of our Law.

Leg. Edw. Conſeſſ. cap. 20.

What *Decenna* was, the word it ſelf does almoſt ſhew: And *Ingulph* makes out, that is, a **Douſin** or *Courtleet*.

Bract. de coronâ, l. 3. c. 10.

Friburg or **Borgh** ſignifies a *Surety*; for **Fri** is all one as *free*.

He who paſſes his word for anothers good behaviour, or good abearing, and is become his ſecurity; is ſaid to have ſuch a one in his **Borgh**: Being ingaged upon this account to the Government, to anſwer for him if he misbehave himſelf. And hence it is, that our people in the Country call thoſe that live near them, or as I may ſay at the next door, **Neighbours**: When yet thoſe that would find out the reaſon why the people of *Liege* in the Low Countries are called *Eburones*, do underſtand that **Burgh**, which is the ſame as **Borgh**, to ſtand for a *Neighbour*; and this is plainly affirmed by *Pontus Heuterus*, in other Originations of the like kind.

Pont. Heut. de vet. Belg. l. 1. c. 13.

Manupaſtus is the ſame thing as a *Family*: As if one would ſay, *fed by hand*. Juſt in the like ſence *Julius Pollux*, in *Greek* terms a Maſter of a Family, *Trophimos*; that is, the *feeder* of it.

Jul. Pollux. l. 3. c. 8.

That the Rights of *Friburg* and *Manupaſt* were in uſe with the *Engliſh* ſome five or ſix Generations ago, is manifeſt. *Curio* a Prieſt is fined by *Edward* the third, becauſe there had been one of his Family a Murderer. And the ancient Sheets concerning the Progreſs or Survey of *Kent* under *Edward* the ſecond, do give ſome light this way. "*Ralph* a Milner of "*Sandon*, and *Roger* a Boy of the ſaid *Ralph* in Borgh of * *Twicham*; (Critick

3. Edw. III. Itin. North. tit. Coron. 293.

6 Edw. 2. Itin. Cant.

* Perhaps it ſhould be *Tincham*.

tick whoever you are, I would not have you to laugh at this home-ſpun Dialect) "came by night to the Mill of *Harghes*, and then and there mur-"dered *William* the Milner; and carried away his Goods and Chattels "and preſently fled: It is not known whither they are gone, and the Ju-"ry miſtruſts them the ſaid *Ralph* and *Roger* concerning the death of the "aforeſaid *William*; therefore let them be driven out and out-lawed. "They had no Chattels, but the aforeſaid *Ralph* was in Borgh of *Simon* "*Godwin* of *Twicham*, who at preſent has him not; and therefore lies at "mercy: And *Roger* was not in Borgh, but was of the Mainpaſt of *Ro*-"*bert* Arch-Biſhop of *Canterbury* deceaſed; there being no *Engleſhire* pre-"ſented, the Verdit is, the murder upon the Hundred. The firſt diſco-"verer of it and three Neighbours are ſince dead; and *Thomas Broks*, one "of the Neighbours, comes and is not miſtruſted; and the Villages of "*Wimesbugewelle* and *Egeſtoun* did not come fully to the Coroners Inqueſt "and are therefore at mercy. And about the ſame time, *Solomon Rois* "of *Ickham* came to the Houſe of *Alice* the Daughter of *Dennis Whenes*, "and beat her and ſtruck her upon the Belly with a ſtaff; ſo that ſhe dy-"ed preſently. And the foreſaid *Solomon* preſently fled, and the Jury "miſtruſt him concerning the death aforeſaid; therefore let him be dri-"ven out and be outlawed. He had no Chattels, nor was he in Borgh "becauſe a Vagrant: The Verdit, the murder lies upon the Hundred. *&c.* And according to this form more ſuch Inſtances.

But let it ſuffice to have hinted at theſe things, adding out of *Henry*

Braſt. lib. 3. de Coronâ c. 10. *Bracton*; "If out of Frank-pledge an Offender be received in any Village, "the Village ſhall be at mercy; unleſs he that fled be ſuch an one, that "he ought not to be in Leet and Frank-pledge; as Nobles, Knights, and

An. 21. Ed. 1. "their Parents (their eldeſt Sons it is in the yearly Records of Law in *Ed*-"*ward* the firſt's time; and we may take in Daughters too) a Clergy-"man, a Freeman, (I fear this word has crept in) and the like, according "to the cuſtom of the Country; and in which caſe he, of whoſe Family "and Mainpaſt they were, ſhall be bound in ſome parts, and ſhall an-"ſwer for them; unleſs the cuſtom of the Country be otherways, that "he ought not to anſwer for his Mainpaſt, as it is in the County of "*Hertford*, where a man does not anſwer for his Mainpaſt for any of-"fence, unleſs he return after Felony, or he receive him after the offence "committed, as in the Circuit of *M. de Pateſhull* in the County of *Hert*-"*ford*, in ſuch a year of King *Henry* the fifth.

In ſooth theſe uſages do partly remain in our *Tythings* and *Hundreds*, not at all hitherto repealed or worn out of faſhion.

CHAP.

CHAP. XXIV.

King Alfred *firſt appointed Sheriffs. By* Duns Scotus *his advice, he gave Order for the breeding up of Youth in Learning. By the way, what a* **Hide** *of Land is. King* Edgar's *Law for Drinking. Prelates inveſtiture by the Kings Ring and Staff. King* Knute's *Law againſt any Engliſh-man that ſhould kill a* Dane. *Hence* **Engleſcyre**. *The manner of Subſcribing and Sealing till* Edward the Confeſſor's *time. King* Harald's *Law that no Welch-man ſhould come on this ſide* Offa's Dike *with a weapon.*

36. "THe Governors of Provinces who before were ſtyled Deputy-"Lieutenants (we return to *Ingulph* and King *Alfred*) He di-"vided into two Offices; that is, into Judges, whom we now call *Ju-"ſtices*, and into *Sheriffs*, who do ſtill retain the ſame name. Away then with *Polydore Virgil*, who fetches the firſt *Sheriffs* from the *Norman* Conqueror.

37. *John Scot Erigena* adviſed the King, that he would have his Subjects inſtructed in good Letters; and that to that end he would by his Edict take care of that which might be for the benefit of Learning. Where-"upon he gave ſtrict order to all Freemen of the whole Kingdom, who "did at leaſt poſſeſs two Hides of Land, that they ſhould hold and keep "their Children till the time of fifteen years of their Age, to learning; "and ſhould in the mean time diligently inſtruct them to know God. Alured. Rhivallens. ap. Tuin. *Apol.* ant. Oxon. l. 2. §. 207.

A **Hide** of Land, that I may note it once for all, and a **Plough-Land** (that is as much Land as can be well turned up and tilled with one Plough every year) are read as ſynonymous terms of the ſame ſence, in *Huntingdon*, *Matthew Paris*, *Thomas Walſingham*; and expreſly in a very old Charter of *Dunſtan*. Although ſome take a *Hide* for an hundred Acres, and others otherwiſe; do thou, if thou hadſt rather ſo do, fanſie it to be as much ground as one can compaſs about with a Bull-hide cut into Thongs, as Queen *Dido* did at *Carthage*: There are ſome who are not unwilling to have it ſo underſtood.

38. King *Edgar* like a King of good Fellows, or Maſter of Revels, made a Law for Drinking. "He gave order that ſtuds or knobs of Silver "or Gold (ſo *Malmsbury* tells us) ſhould be faſtned to the ſides of their Cups "or drinking Veſſels, that when every one knew his mark or boundary, "he ſhould out of modeſty, not either himſelf covet or force another to "deſire more than his ſtint. This is the only Law before the firſt Parliament under King *James*, has been made againſt thoſe *Swill-bowls*,

Συμποσίων τοῦπι καὶ κυλίκων ἐρέπτας, Dionyſius. Æneus.

Swabbers of drunken Feaſts and luſty Rowers,
In full brimm'd Rummers that do ply their Oars.

who by their carowſes (tipling up *Neſtor*'s years, as if they were celebrating the Goddeſs *Anna Perenna*) do at the ſame time drink others Healths, and miſchief and ſpoil their own and the Publick.

39. "There was no choice of Prelates (these are the words of *Ingulph* "again) that was merely free and canonical; but the Court conferred "all Dignities, as well of Bishops as of Abbots, by the Kings Ring and "Staff, according to his good pleasure. The Election or choice was in the Clergy and the Monks; but they desired him whom they had chosen, of the King. *Edmund*, in King *Ethelred*'s time, was after this manner made Bishop of the *Holy Island* on the Coast of *Northumberland*: And Malmsb. lib. 3. de Pontif. & de gest. Reg. 2. King *Edgar* in his Patent, which he signed to the Abby of *Glastenbury*, "retained to himself and his Heirs, the power of bestowing the Pastoral "Staff to the Brother Elect.

40. "To as many as King *Knute* retained with him in *England* (to wit, to the *Danes*; for by their hands also was the Scepter of this Kingdom managed) "it was granted, that they should have a firm peace all over; so "that if any of the *English* killed any of those men, whom the King had "brought along with him; if he could not clear himself by the Judgment Bract. lib. 3. de Coron. cap. 15. "of God (that is, by *Ordeal*) to wit, by water and burning hot iron, "Justice should be done upon him: But if he run away and could not be "taken, there should be paid for him sixty six marks; and they were ga-"thered in the Village where the Party was slain, and therefore because "they had not the murderer forth coming; and if in such Village by rea-"son of their poverty, they could not be gathered, then they should "be gathered in the Hundred, to be paid into the Kings Treasure. In this manner writes *Henry Bracton*, who observes that hence the business of **Englishshire** came into fashion in the Inquests of murder.

Ingulphus. 41. "Hand-Writings (*i.e.* Patents and Grants) till *Edward* the *Confessor*'s "time, were confirmed by the subscriptions of faithful Persons present; a thing practised too among the *Britans* in King *Arthur*'s time, as *John* Joh. Prise defens. hist. Brit. *Price* informs us out of a very ancient Book of the Church of *Landaff*. "Those subscriptions were accompanied with Golden Crosses, and other "sacred Seals or like stamps.

42. "King *Harald* made a Law, that whosoever of the *Welch* should "be found with a Weapon about him without the bound which he had "set them, to wit, *Offa's dike*; he should have his Right Hand cut off "by the Kings Officers. This dike our Chorographer tells us was cut by Camdenus è Sarisburiensi. *Offa* King of the *Mercians*, and drawn along from the mouth of the River *Dee* to the mouth of the River *Wye* for about eighty miles in length, on purpose to keep the *English* and *Welch* asunder.

CHAP.

CHAP. XXV.

The Royal Conſorts great Priviledge of Granting. Felons Eſtates forfeited to the King. Eſtates granted by the King with three Exceptions of Expedition, Bridge, and Caſtle. The Ceremony of the Kings preſenting a Turf at the Altar of that Church, to which he gave Land. Such a Grant of King Ethelbald *comprized in old Verſe.*

THe Donations or Grants of the *Royal Conſort*, though not by the Kings Authority, contrary to what the Priviledge of any other Wife is, were ratified alſo in that Age, as they were by the *Roman* Law: Which by the Patent of *Æthelſwith*, Wife to *Burghred* King of the *Mercians*, granted to *Cuthwuls* in the year 868. hath been long ſince made out by Sir *Edward Coke*, Lord Chief Juſtice of the Common Pleas: Where alſo King *Ethelred*'s ancient Charter proves, that the Eſtates of Felons (thoſe I mean who concern themſelves in Burglaries and Robberies) are forfeited to the King.

C. de donat. inter virum & uxorem. l. 26.

In Epiſt. ad l. 6. Relat.

Having already mentioned thoſe Hand-writings or Grants, which are from one hand and t'other, conveyances of Tenure (the fewel of quarrels) I have a mind, over and above what has been ſaid, to ſet down alſo theſe Remarks, as being to our purpoſe; and taken from the *Saxons*. As for inſtance, that thoſe are moſt frequent whereby Eſtates are conveyed to be held with the beſt and faireſt right; yet moſt commonly theſe three things excepted, to wit, *Expedition*, Repairing of *Bridges*, and Building of *Caſtles*: And that thoſe to whom the Grants were made, were very ſeldom acquitted upon this account. Theſe three exceptions are noted by the term of a *three-knotted neceſſity* in an old Charter, wherein King *Cedwalla* granted to *Wilfrid* (the firſt Biſhop of *Shelſey* in *Suſſex*) the Village of *Paganham* in the ſaid County. "For though in the Grants "of King *Ethelulph* the Church be free (ſays *Ingulph*) and there be a con- "ceſſion of all things for the releaſe of our Souls, and pardon of our ſins "to ſerve God alone without Expedition, and building of Bridge, and "fortifying of Caſtle; to the intent that the Clergy might wholly attend Divine Service: Yet in that publick debate of Parliament, in the Reign of *Henry* the third, concerning the ancient State, Freedom, and Government of the *Engliſh Church*; and concerning the hourly exactions of the *Pope* and the *Leeches*, Jugglers and Decoys of *Rome*, that ſtrolled up and down the Country to pick Peoples Pockets, to the great prejudice of the Common-wealth; they did indeed ſtand for the priviledge of the Church, and produced as Witneſſes thereof the Inſtruments and Grants of Kings; who nevertheleſs were not ſo much inclined to countenance that liberty of the Church, but that, as *Matthew Paris* obſerves, "They always re- "ſerved

Anno Dom. 680.

Ingulph.

Matth. Paris hiſt. major. pag. 838.

"ſerved to themſelves for the publick advantage of the Kingdom, three "things; to wit, Expedition, and the repairing or making up of Bridge "or Caſtle; that by them they might withſtand the incurſions of the Ingulph. "Enemy. And King *Ethelbald* hath this form: I grant that all the "Monaſteries and Churches of my Kingdom be diſcharged from pub- "lick Cuſtoms or Taxes, Works or Services, and Burdens or Pay- "ments or Attendances, unleſs it be the building and repairing of Ca- "ſtles or Bridges, which cannot be releaſed to any one.

Ralph Holinſhed in Hen. 7. I take no notice how King *Ethelred* the twelfth perhaps (but by no means the fifteenth, wherein an Hiſtorian of ours has blundred) hath ſigned the third year of his Reign by the term of an *Olympiad*, after the manner of the *Greek* computation or reckoning: As likewiſe I paſs other things of the like kind, which are many times uſed and practiſed according to the fancy of the Clerks or Notaries. However the laſt words, which are the cloſe of theſe Grants and Patents, are not to be ſlighted. Theſe we may ſee in that of *Cedwalla*, King of the *South-Saxons*, made to *Theodore* Arch-Biſhop of *Canterbury*, in the year 687. thus.

Chart. Archiep. Cant.

See the Charter of Edw. Conf. in Engliſh Rhyme, Camden in Eſſex. "For a further confirmation of my grant, I *Cedwalla* have laid a "Turf of the Land aforeſaid upon the holy Altar of my Saviour: And "with my own hand, being ignorant of Letters, have ſet down "and expreſſed the mark or ſign of the Holy Croſs. Concerning *Withred* and a Turf of Land in *Kent*, *Camden* has the ſame thing; Ingulph. "And King *Ethelulph* is ſaid to have offered his Patent, or Deed of "Gift, on the Altar of the holy Apoſtle St *Peter*.

Ingulph. For a concluſion, I know no reaſon why I may not ſet underneath, the Verſes of an old Poet, wherein he hath compriſed the inſtrument or Grant of founding an Abby, which *Ethelbald*, King of the *Mercians*, gave to *Kenulph* Abbot of *Crowland:* Verſes, I ſay, but ſuch as were made without *Apollo*'s conſent or knowledge.

Iſtum Kenulphum *ſi quis vexaverit Anglus,*
Rex condemno mihi cuncta catella ſua.
Inde meis Monachis de damnis omnibus ultrà
Uſque ſatisfaciat; carcere clauſus erit.
Adſunt ante Deum teſtes hujus dationis
Anglorum proceres Pontificeſque mei.
Sanctus * Guthlacus *Confeſſor & Anachorita*
Hic jacet, in cujus auribus iſta loquor.
Oret pro nobis ſanctiſſimus iſte Sacerdos,
Ad tumbam cujus hæc mea dona dedi.

* The Saint, to whom the Monaſtery was dedicated.

Which in Rhyme dogrel will run much after this hobling rate.

If any English dar this Kenulph, shall
I King condemn to me his Chattels all.
Thenceforth, until my Monks be satisfie,
For damages, in Prison he shall lye.
Witnesses of this Gift here in Gods sight
Are English Peers and Prelates of my Right.
Saint Guthlac Confessor and Anchoret,
Lies here, in whose Ears these words I speak yet.
May he pray for us that most holy Priest,
At whose Tomb these my Gifts I have addrest.

Thus they closed their Donations or Grants; thus we our Remarks of the *Saxons*, being now to pass to the *Normans*.

THE

THE SECOND BOOK OF THE ENGLISH JANUS.

From the NORMAN Conqueſt, to the Death of King *Henry* II.

CHAP. I.

William *the Conquerour's Title. He beſtows Lands upon his followers, and brings Biſhops and Abbots under Military Service. An account of the old Engliſh Laws, called* **Merchenlage, Danelage** *and* **Weſtſaxen-lage.** *He is prevailed upon by the Barons, to govern according to King* Edward's *Laws, and at* S. Albans *takes his Oath ſo to do. Yet ſome new Laws were added to thoſe old ones.*

WILLIAM Duke of *Normandy* upon pretence of a double Right, both that of Blood (inaſmuch as *Emme* the Mother of *Edward the Confeſſor*, was Daughter to *Richard* the firſt Duke of the *Normans*) and withal that of Adoption, having in Battel worſted *Harald* the Son of *Godwin* Earl of *Kent*, obtain'd a large Inheritance, and took poſſeſſion of the Royal Government over all *England*.

'After his Inauguration he liberally beſtowed the Lands and Eſtates

'of

'of the *Engliſh* upon his fellow-ſoldiers; that little which remained (ſo 'ſaith *Matthew Paris*) he put under the yoke of a perpetual ſervitude. Upon which account, ſome while ſince the coming in of the *Normans*, there was not in *England* except the King himſelf, any one, who held Land by right of *Free-hold* (as they term it:) ſince in ſooth one may well call all others to a man only Lords in truſt of what they had; as thoſe who by ſwearing fealty, and doing homage, did perpetually own and acknowledge a Superior Lord, of whom they held, and by whom they were inveſted into their Eſtates.

'All Biſhopricks and Abbacies, which held Baronies, and ſo far 'forth had freedom from all Secular ſervice (the fore-cited *Matthew* is 'my Author) he brought them under Military ſervice, enrolling every 'Biſhoprick and Abbacy according to his own pleaſure, how many Soul-'diers he would have each of them find him and his Succeſſors in time 'of Hoſtility or War.

Having thus according to this model ordered the *Agrarian* Law for the diviſion and ſettlement of Lands, 'he reſolved to govern his Sub-'jects (we have it from *Gervaſe* of *Tilbury*) by Laws and Ordinances 'in writing: to which purpoſe he propoſed alſo the *Engliſh* Laws ac-'cording to their Tripartite or threefold diſtinction; that is to ſay, *Mer-'chenlage*, *Danlage* and *Weſtſaxenlage*.

Gerv. Tilb. de ſcacc. cap. 32.

Merchenlage, that is, the Law of the *Mercians*; which was in force in the Counties of *Gloceſter*, *Worceſter*, *Hereford*, *Warwick*, *Oxford*, *Cheſter*, *Salop* and *Stafford*.

Danlage, that is, the Law of the *Danes*; which bore ſway in *Yorkſhire*, *Derby*, *Nottingham*, *Leiceſter*, *Lincoln*, *Northampton*, *Bedford*, *Buckingham*, *Hertford*, *Eſſex*, *Middleſex*, *Norfolk*, *Suffolk*, *Cambridge*, *Huntingdon*.

Weſtſaxenlage, that is, the Law of the *Weſt-Saxons*; to which all the reſt of the thirty two Counties (which are all that *Malmesbury* reckons up in *Ethelred*'s time) did belong; to wit, *Kent*, *Suſſex*, *Surrey*, *Berks*, *Southampton*, *Winton*, *Somerſet*, *Dorſet* and *Devon*.

'Some of theſe *Engliſh* Laws he diſliked and laid aſide; others he ap-'proved of, and added to them, ſome from beyond Sea out of *Neuſtria* (he means *Normandy*, which they did of old, term *Neuſtria* corruptly, inſtead of *Weſtrich*, as being the more Weſtern Kingdom of the *Franks*, and given by *Charles the Simple* to *Rollo* for his Daughter *Gilla* her portion) 'ſuch of them as ſeemed moſt effectual for the preſerving of the 'Kingdoms peace. This ſaith he of *Tilbury*.

Now this is no rare thing among Writers for them to deviſe, that *William* the Conqueror brought in as it were a clear new face of Laws to all intents and purpoſes. 'Tis true, this muſt be acknowledg'd, that he did make ſome new ones (part whereof you may ſee in *Lambard*'s *Archæonomia*, and part of them here ſubjoyned) but ſo however that they take their denomination from the *Engliſh*, rather than from the *Normans*; although one may truly ſay, according to what Lawyers diſpute, that the *Engliſh* Empire and Government was overthrown by him. That he did more eſpecially affect the Laws of the *Danes* (which were not much unlike to thoſe of the *Norwegians*, to whom *William* was by his Grand-father allied in blood) I read in the Annals of *Roger Hoveden*. And that he openly declared, that he would rule by them; 'at hearing 'of which, all the great men of the Countrey, who had enacted the '*Engliſh* Laws, were preſently ſtruck into dumps, and did unanimouſly

'petition

'petition him, That he would permit them to have their own Laws 'and ancient Cuſtoms; in which their Fathers had lived, and they them- 'ſelves had been born and bred up in; foraſmuch as it would be very 'hard for them to take up Laws that they knew not, and to give judge- 'ment according to them. But the King appearing unwilling and un- 'eaſie to be moved, they at length proſecuted their purpoſe, beſeeching 'him, that for the Soul of King *Edward*, who had after his death given 'up the Crown and Kingdom to him, and whoſe the Laws were, and not 'any others that were ſtrangers, he would hearken to them and grant 'that they might continue under their own Countrey Laws. Where- 'upon calling a Council, he did at the laſt yield to the requeſt of the 'Barons. From that day forward therefore the Laws of King *Edward*, 'which had before been made and appointed by his Grand-father *Adgar*, 'ſeeing their authority, were before the reſt of the Laws of the Coun- 'trey reſpected, confirmed and obſerved all over *England*. But what then? Doth it follow that all things in *William*'s time were new? How can a man chuſe but believe it? The Abbot of *Crowland* ſayes this of it, 'I have brought with me from *London* into my Monaſtery the Laws of 'the moſt Righteous King *Edward*, which my Renowned Lord King '*William* hath by Proclamation ordered, under moſt grievous penalties, 'to be authentick and perpetual, to be kept inviolably throughout 'the whole Kingdom of *England*, and hath recommended them to his 'Juſtices, in the ſame language wherein they were at firſt ſet forth 'and publiſhed. And in the Life of *Fretherick* Abbot of S. *Albans* you have this account: 'After many debates, Arch-Biſhop *Lanfrank* being 'then preſent (at *Berkhamſtead* in *Hartfordſhire*) the King did for the 'good of peace, take his Oath upon all the Reliques of the Church of 'S. *Alban*, and by touching the holy Goſpels, *Fretherick* the Abbot ad- Camden. 'miniſtring the Oath, that he would inviolably obſerve the good and ap- 'proved ancient Laws of the Kingdom, which the holy and pious Kings 'of *England* his Predeceſſors, and eſpecially King *Edward* had appointed.

But you will much more wonder at that paſſage of *William* le Rouille Guil. le Rouille Alencon. of *Alençon* in his Preface to the *Norman* Cuſtoms. 'That vulgar Chro- 'nicle, ſaith he, which is intitled the *Chronicle of Chronicles*, bears wit- 'neſs, that S. *Edward* King of *England*, was the Maker or Founder of 'this Cuſtom; where he ſpeaks of *William* the Baſtard Duke of *Nor*- '*mandy*, *alias* King of *England*, ſaying, that whereas the foreſaid S. *Ed*- 'ward had no Heirs of his own Body, he made *William* Heir of the King- 'dom, who after the Defeat and Death of *Harald* the Uſurper of the 'Kingdom, did freely obtain and enjoy the Kingdom upon this conditi- 'on, to wit, that he would keep the Laws which had before been made 'by the fore-mentioned *Edward*; which *Edward* truly had alſo given 'Laws to the *Normans*, as having been a long time alſo brought up 'himſelf in *Normandy*.

Where then, I pray you, is the making of new Laws? Why! without doubt, according to *Tilbury*, we are to think, that together with the ratifying of old Laws, there was mingled the making of ſome new ones; and in this caſe one may ſay truly with the Poet in his Panegyrick:

Claudian. in 4. conſ. Honorii.

Firmatur ſenium Juris, priſcamque reſumunt
Canitiem leges, emendanturque vetuſtæ,
Acceduntque novæ. ———

which in *Engliſh* ſpeaks to this ſenſe;

The Laws old age ſtands firm by Royal care,
Statutes reſume their ancient gray hair.
Old ones are mended with a freſh repair;
And for ſupply ſome new ones added are.

See here! we impart unto thee, Reader, theſe new Laws, with other things, which thou maiſt juſtly look for at my hands in this place.

CHAP.

CHAP. II.

The whole Country inrolled in Dooms-day Book. *Why that Book ſo called.* Robert *of* Gloceſter's *Verſes to prove it. The Original of Charters and Seals from the* Normans, *practiſed of old among the* French. *Who among the* Romans *had the priviledge of uſing Rings to ſeal with; and who not.*

1. 'HE cauſed all *England* to be deſcribed, and inrolled (a whole 'company of Monks are of equal authority in this buſineſs, but we make uſe of *Florentius* of *Worceſter* for our witneſs at this time) 'how much Land every one of his Barons was poſſeſſed of, how many 'Soldiers in fee, how many Ploughs, how many Villains, how many 'living Creatures or Cattel, I, and how much ready mony every one 'was Maſter of throughout all his Kingdom, from the greateſt to the 'leaſt; and how much Revenue or Rent every Poſſeſſion or Eſtate was 'able to yield. Dooms-day.

That breviary or *Preſent State* of the Kingdom being lodged in the Archives 'for the generality of it, containing intirely all the Tenements 'or Tenures of the whole Country or Land was called **Dooms-day**, as if one would ſay, *The day of Doom* or Judgment. 'For this reaſon, ſaith 'he of *Tilbury*, we call the ſame *Dooms-day Book*: Not that there is in it 'ſentence given concerning any doubtful caſes propoſed; but becauſe it 'is not lawful upon any account, to depart from the *Doom* or Judgment 'aforeſaid.

Reader, If it will not make thy nice Stomach wamble, let me bring in here an old faſhioned Rhyme, which will hardly go down with our dainty finical Verſe-wrights, of an hiſtorical Poet *Robert* of *Gloceſter*: One whom, for his Antiquity, I muſt not ſlight concerning this Book.

The K. W. for to wite the worth of his londe
Let enqueri ſtreitliche thoru al Engelonde,
Hou moni plou lond, and hou moni hiden alſo
Were in everich ſire, and wat hii were wurth pereto:
And the rents of each toun, and of the waters echone,
That wurth, and of woods eke, that there ne bilefed none,
But that he wiſt wat hii were wurth of al Engelonde,
And wite al clene that wurth thereof ich underſtond
And let it write clene inou, and that ſcrit dude iwis
In the Treſorie at Weſtminſter there it put is.
So that vre Kings ſuth, when hii ranſome toke
And redy wat folc might give, hii fond there in vor boke.

Conſidering how the *Engliſh* Language is every day more and more refined, this is but a rude piece, and looks ſcurvily enough. But yet let us not be unmindful neither, that even the fine trim artifices of our quaint Maſters of Expreſſion, will themſelves perhaps one day, in future Ages, that ſhall be more critical, run the ſame risk of cenſure, and undergo the like misfortune: And that,

Horat. art. poetic.

Multa renaſcentur quæ nunc cecidere, cadentque
Quæ nunc ſunt in honore;——

As *Horace* the Poet born at *Venuſium*, tells us: That is,

Several words which now are fal'n full low,
Shall up again to place of honour ſtart;
And words that now in great eſteem, I trow,
Are held, ſhall ſhortly with their honour part.

2. 'The *Normans* called their Writings given under their hand, Charters (I ſpeak this out of *Ingulph*) and they ordered the confirmation of 'ſuch Charters with an impreſſion of Wax, by every ones particular 'Seal, under the Teſtimony and Subſcription of three or four Witneſſes 'ſtanding by.

But *Edward the Confeſſor* had alſo his Seal, though that too from *Normandy*. For in his time, as the ſame Writer ſaith, 'Many of the *En*-'*gliſh* began to let ſlip and lay aſide the *Engliſh* Faſhions, bringing in 'thoſe of the *Normans* in their ſtead, and in many things to follow the 'cuſtoms of the *Franks*; all great perſons to ſpeak the *French* Tongue in 'their Courts, looking upon it as a great piece of gentility, to make 'their Charters and Writings *alamode of France*; and to be aſhamed of 'their own Country uſages in theſe and other like caſes. Nay, and if *Leland*, an Eye-witneſs, may be believed, our great Prince *Arthur* had his Seal alſo, which he ſaith he ſaw in the Church of *Weſtminſter* with this very inſcription.

Leland.

PATRITIUS. ARTHURIUS. BRITANNIÆ. GALLIÆ. GERMANIÆ. DACIÆ. IMPERATOR.

That is,

The Right Noble, ARTHUR, *Emperor of* Britanny, France, Germany, *and* Tranſylvania.

But that the *Saxons* had this from the *Normans*, is a thing out of all queſtion. Their Grants or Letters Patents ſigned with Croſſes, and ſubſcribed with Witneſſes names, do give an undoubted credit and aſſurance to what I have ſaid. *John Roſs* informs us that *Henry Beauclerk* was the firſt that made uſe of one of Wax; and *Matthew of Canterbury*, that *Edward* the firſt did firſt hang it at the bottom of his Royal Writings by way of Label; whereas before, his Predeceſſors faſtned it to the left ſide. Such a writing of *Henry* the firſt in favour of *Anſelm*, the laſt Author makes mention of; and ſuch an one of *William*'s Duke of the *Normans*, though a very ſhort one and very ſmall written; *Brian Twine* in his *Apology for the Antiquity* of the famous Univerſity of *Oxford* (the great Study and ſupport of *England*, and my ever highly honoured Mother) ſaith, he had ſeen in the Library of the Right Honourable my Lord *Lumley*.

Matth. Cantu. in Antiq. Eccleſ. Britan.

Tuin. apol. ant Oxon. lib. 1. §. 81.

But let a circumciſed *Jew*, or who elſe will for me, believe that ſtory concerning the firſt Seal of Wax, and the firſt faſtning of it to the Writing: A great many waxen ones of the *French* Peers (that I may ſay ſomething of thoſe in wax) and Golden ones of their Kings (to wit, betwixt

twixt the years 600 and 700) we meet with fashioned like Scutcheons or Coats of Arms in those Patterns or Copies which *Francis de Rosieres* has in his first Tome of the Pedigree or Blazonry of the Dukes of *Lorain*, set down by way of Preface. Nor was it possible that the *Normans* should not have that in use, which had been so anciently practised by the *French*. Let me add this out of the ancient Register of *Abendon*: 'That 'Richard Earl of *Chester* (who flourished in the time of *Henry* the first) 'ordered to sign a certain Writing with the Seal of his Mother *Ermentrude*; 'seeing that (being not girt with a Soldiers Belt, *i. e.* not yet made 'Knight) all sorts of Letters directed by him, were inclosed with his 'Mothers Seal. Camden in Ord. Angl.

How? what is that I hear? Had the Knightly dignity and Order the singular priviledge, as it was once at *Rome*, to wear Gold-Rings? For Rings (as 'tis related out of *Ateius Capito*) were especially designed and ingraven for Seals: Let *Phœbus*, who knows all things, out of his Oracle tell us. For Servants or Slaves (so says *Justus Lipsius*, and remarks it from those that had been dug up in *Holland*) and common Soldiers were allowed iron ones to sign or to seal with (which therefore *Flavius Vopiscus* calls *annulos sigillaricios*, *i. e.* seal-Rings) and so your ordinary Masters of Families had such, with a Key hanging at it to seal and lock up their provision and utensils. 'But, saith *Ateius* of the ancient time, Neither 'was it lawful to have more than one Ring, nor for any one to have one 'neither but for Freemen, whom alone trust might become, which is 'preserved under Seal; and therefore the Servants of a Family had not 'the Right and Priviledge of Rings. I come home to our selves now. Macrob. Saturn. lib. 7. cap. 13. Vopisc. in Aurel. Lipf. ad 2. Annal. Tacit. num. 4.

CHAP.

CHAP. III.

Other ways of granting and conveying Eſtates, by a Sword, &c. particularly by a Horn. Godwin's *trick to get* Boſeham *of the Arch-Biſhop of* Canterbury. *Pleadings in* French. *The* French *Language and Hand when came in faſhion. Coverfeu. Laws againſt taking of Deer, againſt Murder, againſt Rape.*

Ingulph. 3. 'AT firſt many Lands and Eſtates were collated or beſtowed by 'bare word of mouth, without Writing or Charter, only 'with the Lords Sword or Helmet, or a Horn or a Cup; and very many 'Tenements with a Spur, with a Currycomb, with a Bow, and ſome 'with an Arrow: But theſe things were in the beginning of the *Norman* 'Reign, in after times this faſhion was altered, ſays *Ingulph.*

I, and theſe things were before the *Normans* Government. Let King *Edgar* his Staff cut in the middle, and given to *Glaſtenbury Abbey* for a teſtimony of his Grant, be alſo here for a teſtimony. And our Antiquary has it of Puſey in *Berkſhire*, 'That thoſe who go by the name of Puſey do ſtill hold by a Horn, which heretofore had been beſtowed upon 'their Anceſtors by *Knute* the *Daniſh* King. In like manner, to the ſame purpoſe an old Book tells this ſtory: 'That one *Ulphus* the Son of *Toraldus*, 'turned aſide into *York*, and filled the Horn that he was uſed to drink out 'of, with Wine; and before the Altar upon his bended knees, drinking 'it, gave away to God and to St. *Peter*, the Prince of the Apoſtles, all his 'Lands and Revenues. Which Horn of his, ſaith *Camden*, we have been told was kept or reſerved down to our Fathers memory. We may ſee the conveyance of Eſtate, how eaſie it was in thoſe days, and clear from the punctilio's of Law, and withal how free from the captious malice of thoſe petty-foggers who would intangle Titles and find flaws in them, and from the ſwelling Bundles and Rolls of Parchments now in uſe.

Malmsb. lib. 2. cap. 8.

A. Ch. 780.

Guil. Mapæus. Camden.

But commend me to *Godwin* Earl of *Kent*, who was, to uſe *Hegeſander*'s word, too great a Συλλαβοπιπλαβίτης, *catcher at Syllables*, and as the Comedian ſays, *more ſhifting than a Potters wheel*: 'Give me (ſaith he to the Arch-Biſhop of *Canterbury*) 'Boſeham. The Arch-Biſhop admiring 'what it was he would be at in that queſtion, ſaith, I give you Boſeham. He ſtraight upon the confidence of this deceit, without any more ado entred upon an Eſtate of the Arch Biſhops of that name on the Sea-coaſts of *Suſſex*, as if it had been his own by Inheritance: And with the 'teſtimony of his people about him, ſpoke of the Arch-Biſhop before the 'King as the donor of it, and quietly enjoyed it. Thoſe things I ſpoke of before (to wit, of *Sword*, *Horn*, *&c.*) ſmell of that way of inveſting into Fees which we meet with in *Obertus de Orto*; but are very unlike to that ſolemn ceremony which is from ancient time even ſtill uſed in conveying of an Eſtate and delivering poſſeſſion, wherein a green Turf or the bough of a growing Tree is required.

Lib. feud. 2. tit. 2.

4. 'They did ſo much abhor the *Engliſh* tongue ('tis the Abbot of *Crowland* ſaith it) 'that the Laws of the Land, and the Statutes of the *En-* 'gliſh Kings, were handled or pleaded in the *French* language. For till 'the thirty ſixth year of *Edward* the third, all buſineſſes of Law were 'pleaded

Stat. 36 Ed. 3. cap. 15.

'pleaded in *French*. That alſo in Schools the Rudiments of Grammati-
'cal Inſtitution, were delivered to Boys in *French* and not in *Engliſh*.
'Alſo that the *Engliſh* way and manner of Writing was laid aſide, and
'the *French* mode was made uſe of in all Charters or Inſtruments and
'Books.

Indeed it was ſuch a fault to be ignorant in the *French*, or not to be able to ſpeak it; that mainly upon this account, in the Reign of *William Rufus*, *Ulſtan* Biſhop of *Worceſter* was cenſured as unworthy of his place, and deprived of his dignity, who as to other things according to the ſimplicity of that Age, was Scholar enough. The Abbot whom I quoted, ſpeaks thus of the *French* Character: 'The *Saxon* hand was uſed by
'all the *Saxons* and *Mercians* in all their hand-writings, till the time
'of King *Alfred*, who had by *French* Tutors been very well trained up
'in all Literature; but from the time of the ſaid King, it did by diſuſe
'come to be of little account; and the *French* hand, becauſe it being
'more legible and more delightful to ſight, had the preheminence, grew
'more and more every day in vogue and uſe among all the *Engliſh*. Nevertheleſs however this buſineſs went, we are told that in the memory of our Fathers, and that by an ancient order, there were Lectures of the *Engliſh-Saxon* language, read at *Taviſtock* Abby in *Devonſhire*. Matth. Paris.

5. That his new Kingdom might not be diſturbed by Riots and diſorders in the night, he ordered that at the Ringing of a Bell (which they called the *Curfew*-Bell) all the Lights and Fires ſhould in every little Cottage, a little after the duſk of the Evening, be put out. Polydorus. Coverfeu.

6. 'He that ſhould take a Deer, or *aprum*, a Boar (ſo ſays *Huntingdon*,
'but perhaps 'tis *caprum*, a Buck) or a Roe, was to have his eyes thruſt
'or plucked out, ſaith *Matthew Paris*.

7. 'If any one had ſlain any one ('tis *Huntingdon* writes this) be it
'upon what cauſe or occaſion ſoever, he was ſentenced to a Capital pu-
'niſhment, he was to die for it.

8. 'If one had forced any woman (ſo I read *aliquam* any woman, not
'*aliquem* any man, as 'tis in the common Prints) he was to have his Pri-
'vities cut off. Forced her? I, ſure enough; and perhaps he that lay with a woman with her conſent, was notwithſtanding that, ſerved in the ſame kind too. And in this caſe I would have you hear what that great Lawyer *Albericus Gentilis*, his opinion is. 'This I ſay, ſaith he, that a
'man hath a greater injury done him, if the woman were not raviſhed
'*per* force, but were debauched and made willing: becauſe in this caſe
'her mind is eſtranged from her Husband; but in that other, not. Alberic. Gentil. de jure bell. lib. 1. c. 20.

CHAP.

CHAP. IV.

Sheriffs and Juries were before this time. The four Terms. Judges to Act without Appeal. Juſtices of Peace. The Kings payments made at firſt in Proviſions. Afterwards changed into Mony, which the Sheriff of each County was to pay in to the Exchequer. The Conſtable of Dover *and Warden of the* Cinque Ports *why made. A diſorder in Church-affairs Reformed.*

POlydore *Virgil* brings in at this time the firſt *Sheriffs* of Counties, and here places the beginning of *Juries*, or determining of Tryals by the judgment of Twelve; but is out in them both. This of *Juries* is convinced by a Law of *Ethelred* in *Lambard*'s explications of Law-terms, and by thoſe irrefragable arguments which the famous Sir *Edward Coke* brings againſt it. That other miſtake of *Sheriffs* is confuted by what we have formerly noted out of *Ingulph*, and by what we ſhall hereafter ſomewhere have occaſion to remark. *Mars* being impleaded in the *Areopagus*, the place of Judgment at *Athens*, for the murder of *Halirothius* the Son of *Neptune*, whom he had ſlain for Raviſhing his Daughter *Alcippa*; upon his Tryal by twelve Gods, was acquitted by ſix Sentences or Votes: For if the number were equal and no majority, the Perſon was not condemned but diſcharged. My meaning why I put in this Story, is to ſhew the moſt ancient uſe of this number of *twelve* in Tryals elſewhere, as well as amongſt us. An *Italian* might well miſtake in a concern of *England*; yet take it not ill at my hands, that I have given you this upon his credit.

Auguſt. de Civ. Dei. l. 18. c. 10. Pauſan. Atticis.

Terms. 9. 'He appointed that four times every year, there ſhould be kept 'Conventions or Meetings for ſeveral days, in ſuch place as he himſelf 'ſhould give order: In which Meetings the Judges ſitting apart by them-'ſelves, ſhould keep Court and do Juſtice. Theſe are our four **Terms.**

10. 'He appointed other *Judges*, who without appeal ſhould exerciſe 'Juriſdiction and Judgment; from whom as from the boſom of the 'Prince, all that were ingaged in quarrels, addreſſing thither, might have 'right done them, and refer their controverſies to them.

Juſtices of Peace. 11. 'He appointed other Rulers or Magiſtrates, who might take care 'to ſee miſdemeanors puniſhed; theſe he called **Juſtices of Peace.** Now one may well imagine, that this name of Office is moſt certainly of a later date, and a foreign Writer is to be excuſed by thoſe rights which are afforded to Gueſts and Strangers (ſince acting a *Buſiris* his part againſt them, would be downright barbarous) I ſay he is to be excuſed ſo far, as not to have his miſtakes in the Hiſtory of the *Engliſh* Nation, too heavily charged upon him.

12. 'In the Primitive State of the Kingdom after the Conqueſt (*Gervaſe of Tilbury* in his Dialogue of the Exchequer, ſaith, this is a thing handled down from our Forefathers) 'the Kings had payments made 'them

'them out of their Lands, not in ſums of Gold or Silver, but only in Vi-'ctuals or Proviſions: Out of which the Kings houſe was ſupplied with 'neceſſaries for daily uſe; and they who were deputed to this ſervice (the Purveyors) 'knew what quantity aroſe from each ſeveral land. But 'yet as to Soldiers pay or donatives, and for other neceſſaries concerning 'the Pleas of the Kingdom, or Conventions, as alſo from Cities and Ca-'ſtles where they did not exerciſe Husbandry or Tillage; in ſuch inſtan-'ces, payments were made in ready mony. Wherefore this Inſtitution 'laſted all the time of *William* the Firſt, to the time of King *Henry* his 'Son, ſo that I my ſelf (*Gervaſe* flouriſhed in the Reign of *Henry* the ſe-cond) 'have ſeen ſome people, who did at ſet times carry from the Kings 'Lands, victuals or proviſions of food to Court. And the Officers alſo 'of the Kings houſe knew very well, having it upon account, which 'Counties were to ſend in Wheat, which to ſend in ſeveral ſorts of fleſh, 'and Provender for the Horſes. Theſe things being paid according to 'the appointed manner and proportion of every thing, the Kings 'Officers reckoned to the *Sheriffs* by reducing it into a ſum of 'pence; to wit, for a meaſure of Wheat to make bread for a hundred 'men, one ſhilling; for the body of a paſture-fed Beef, one ſhilling; 'for a Ram or a Sheep four pence; for the allowance of twenty horſes 'likewiſe four pence: But in proceſs of time, when as the ſaid King was 'buſie in remote parts beyond Sea to appeaſe Tumults and Inſurrections; 'it ſo happened, that ready mony was highly neceſſary for him to ſupply 'his occaſions. In the mean time, there came in multitudes, a great 'company of Husbandmen with complaints to the Kings Court, or which 'troubled him more, they frequently came in his way as he was paſſing 'by, holding up their Ploughſhares, in token that their Husbandry was 'running to decay; for they were put to a world of trouble, upon occa-'ſion of the proviſions which they carried from their own quarters 'through ſeveral parts of the Kingdom. Thereupon the King being 'moved with their complaints, did by the reſolved advice of his Lords, 'appoint throughout the Kingdom ſuch perſons, as he knew were, for 'their prudence and diſcretion, fit for the ſervice. Theſe perſons going 'about, and that they might believe their own eyes, taking a view of 'the ſeveral Lands, having made an eſtimate of the proviſions which 'were paid out of them, they reduced it into a ſum of pence. But for 'the total ſum, which aroſe out of all the Lands in one County, they or-'dered, that the *Sheriff* of that County ſhould be bound to the Exche-'quer: Adding this withal, that he ſhould pay it at the *Scale*. Now the manner of paying, the tryal of the weight and of the metal by Chy-mical operation, the Melter or Coyner, and the ſurveyor of the Mint, are more largely handled and explained by my ſelf in ſome other work of mine.

13. 'That he might the more firmly retain *Kent* to himſelf, that be-'ing accounted as it were *the Key of England*; ('tis the famous Mr. *Cam-den* tells the Story) 'he ſet a *Conſtable* over *Dover-Caſtle*, and made the 'ſame perſon *Warden of the Cinque Ports*, according to the old uſage of 'the *Romans*. Thoſe are Haſtings, Dover, Hith, Rumney, and 'Sandwich; to which are joyned Winchelſey and Rye as Principals, 'and other little Towns as Members.

14. To put the laſt hand to *William*, I add out of the *Archives*, this Law, not to be accounted among the laſt or leaſt of his.

A. M. 66. In Bor. chart. 2 Rich. 2. pro decan. & capit. Eccleſ. Lincoln.

William, *by the Grace of God, King of the* Engliſh, *to all Counts or Earls, Viſcounts or Sheriffs, and to all* French *born, and* Engliſh *men, who have Lands in the Biſhoprick of* Remigius, *greeting.*

This *Remigius* was the firſt who tranſlated the Epiſcopal See from *Dorcheſter* to *Lincoln.*

'Be it known unto you all, and the reſt of my Liege Subjects, who 'abide in *England*; that I, by the common advice of my Arch-Biſhops, 'and the reſt of the Biſhops and Abbots, and all the Princes of my King-'dom, have thought fit to order the amendment of the Epiſcopal Laws, 'which have been down to my time, in the Kingdom of the Angles, 'not well, nor according to the Precepts of the holy Canons, ordained 'or adminiſtred: Wherefore I do command, and by my Royal Autho-'rity ſtrictly charge; that no Biſhop or Arch-deacon, do henceforth 'hold Pleas in the Hundred concerning Epiſcopal Laws; nor bring any 'cauſe which belongs to the Government of Souls (*i.e.* to ſpiritual affairs) 'to the judgment of ſecular men; but that whoſoever, according to the 'Epiſcopal Laws, ſhall for what cauſe or fault ſoever be ſummoned, ſhall 'come to a place which the Biſhop ſhall chuſe and name for this purpoſe; 'and there make anſwer concerning his cauſe, and do right to God and 'his Biſhop, not according to the Hundred, but according to the Canons 'and Epiſcopal Laws. For in the time of the *Saxon* Empire, there were wont to be preſent at thoſe Country Meetings (the *Hundred* Courts) an *Alderman* and a *Biſhop*, the one for Spirituals, the other for Temporals, as appears by King *Edgar*'s Laws.

Leg. Edgar. cap. 5.

CHAP.

CHAP. V.

William Rufus *ſucceeds.* Annats *now paid to the King. Why claimed by the Pope. No one to go out of the Land without leave. Hunting of Deer made Felony.*

AFter the death of *William*, his ſecond Son *WILLIAM* ſirnamed *RUFUS* ſucceeded in his room. All Juſtice of Laws (as *Florentius of Worceſter* tells us) 'was now huſht in ſilence, and 'Cauſes being put under a Vacation without hearing, money alone bore 'ſway among the great ones,

Ipſaque majeſtas auro corrupta jacebat. Petron. Arbit.

that is;

And Majeſty it ſelf being brib'd with gold,
Lay, as a proſtitute, expos'd to th' bold.

15. The right or duty of *Firſt-Fruits*, or, as they are commonly called, the *Annats*, which our Kings claimed from vacant Abbies and Biſhopricks, *Polydor Virgil* will have to have had its firſt original from *Rufus*. Now the Popes of *Rome* laid claim to them anciently; a ſort of Tribute, which upon what right it was grounded, the Council of *Baſil* will inform us, and by what opinion and reſolution of Divines and Lawyers confirmed, *Francis Duarenus* in his Sacred Offices of the Church will inſtruct us. 'Tis certain, that Chronologers make mention, that at his death the Biſhopricks of *Canterbury*, *Wincheſter* and *Salisbury*, and twelve Monaſteries beſide, being without Prelates and Abbots, paid in their Revenues to the Exchequer.

Baſil. concil. ſeſſ. 21. Duaren. de Benef. l. 6. c. 3. Vid. Platin. in Joh. 22. vitâ.

16. 'He forbad by publick Edict or Proclamation (ſayes the ſame Author) 'that any one ſhould go out of *England* without his leave and 'Paſsport. We read, that he forbad *Anſelm* the Arch-Biſhop, that he ſhould not go to wait upon Pope *Urban*; but that he comprehended all Subjects whatſoever in this his Royal order, I confeſs I have not met with any where in my reading, but in *Polydor*.

17. 'He did ſo ſeverely forbid hunting of Deer (ſaith *William of Malmesbury*) 'that it was Felony, and a hanging matter to have taken 'a Stag or Buck.

CHAP. VI.

Henry *the First why called* Beauclerk. *His Letters of Repeal. An Order for the Relief of Lands. What a* **Hereot** *was. Of the Marriage of the Kings Homagers Daughter,* &c. *Of an Orphans Marriage. Of the Widows Dowry. Of other Homagers the like. Coynage-money remitted. Of the diſpoſal of Eſtates. The Goods of thoſe that dye Inteſtate, now and long ſince, in the Churches Juriſdiction; as alſo the buſineſs of Wills. Of Forfeitures. Of Miſdemeanors. Of Foreſts. Of the* **Fee de Hauberk.** *King* Edward's *Law reſtored.*

William, who had by direful Fates been ſhewn to the World, was followed by his Brother **Henry**, who for his ſingular Learning, which was to him inſtead of a Royal Name, was called **Beau-clerk**. He took care of the Common-wealth, by amending and making good what had ſlipt far aſide from the bounds of Juſtice, and by ſoftning with wholſome remedies thoſe new unheard of, and moſt grievous injuries, which *Ralph* afterwards Biſhop of *Durham* (being Lord Chief Juſtice of the whole Kingdom) plagued the people with. He ſends *Letters of Repeal* to the High Sheriffs, to the intent, that the Citizens and people might enjoy their liberty and free rights again. See here a Copy of them, as they are ſet down in *Matthew Paris.*

HENRY *by the Grace of God King of* England, *to* Hugh *of* **Bocland**, *High Sheriff, and to all his Liege people, as well* French *as* Engliſh *in* Herefordſhire, *Greeting. Know ye, that I through the mercy of God, and by the common advice of the Barons of the Kingdom of* England *have been crowned King. And becauſe the Kingdom was oppreſt with unjuſt exactions, I out of regard to God, and that love which I bear towards you all, do make the holy Church of God free, ſo that I will neither ſell it, nor will I put it to farm, nor upon the death of Arch-Biſhop, or Biſhop, or Abbot, will I take any thing of the domain of the Church, or of the men thereof, till a Succeſſor enter upon it. And all evil Cuſtoms, wherewith the Kingdom of* England *was unjuſtly oppreſſed, I do henceforward take away; which evil uſages I do here in part ſet down.*

18. 'If any one of my Barons, Counts or others that hold of me, ſhall 'dye, his Heir ſhall not redeem his Land, as he was wont to do in the 'time of my Father, but relieve it with a lawful and due relief. In like 'manner alſo ſhall the Homagers or Tenants of my Barons relieve their 'Lands from their Lords with a lawful and juſt relief. It appears, that 'in the times of the *Saxons* a **Hereot** was paid to the Lord at a Tenants 'death, upon the account of proviſion for War (for **here** in *Saxon* ſignifies an Army:) 'and that which in our memory now in *French* 'is called a **Relief** (*Henry of Bracton* ſayes, 'tis an engagement to recognize the Lord) 'doth bear a reſemblance of the ancient *Hereot.* 'Thereupon it is a gueſs, ſaith *William Lambard*, that the *Normans* being 'Conquerours,

Canut. leg. cap. 69. & Ed. Confeſſ. Bracton. lib. 2. cap. 35. Ἐις ἑξοδιον in Novell. Lev. 13. Hotoman. in verbo Feudal. Relev.

'Conquerors, did remit the *Hereot* to the *Angles* whom they had con-
'quered and ſtripped of all kind of Armour, and that for it they ex-
'acted money of the poor wretches. To this agrees that which is men-
tioned in the State of *England* concerning the Nobles of *Berkſhire*. A
'*Tain* or Knight of the Kings holding of him, did at his death for a
'Relief part with all his Arms to the King, and one Horſe with a Saddle
'and another without a Saddle. And if he had Hounds or Hawks, they
'were preſented to the King, that if he pleaſed he might take them. And
'in an ancient Sanction of *Conrade* the Firſt, Emperour of *Germany*, If a
'Souldier that is Tenant or Leſſee happen to dye, let his Heir have the
'Fee, ſo that he obſerve the uſe of the greater *Vavaſors*, in giving his
'Horſes and Arms to the Seniors or Lords. *John Mariana* takes notice,
that the word *Seniors* in the Vular Languages, *Spaniſh*, *Italian* and
French, ſignifies *Lords*, and that to have been in uſe from the time of
Charlemain's Reign. But theſe things you may have in more plenty from
the *Fendiſts*, thoſe who write concerning Tenures.

Carol. Sigon. de reg. Ital. lib. 8. V. Horom. comm. ad 3. lib. Feud. Mariana hiſt. Hiſpan. lib. 9. cap. 11.

19. 'If any of my Barons or other men (Homagers or Tenants) of
'mine (I return to King *Henry*'s Charter) ſhall have a mind to give
'his Daughter, or Siſter, or Niece, or Kinſwoman in marriage, let him
'ſpeak with me about it. But neither will I take any thing of his for
'this leave and licence, nor will I hinder him from betrothing her, ex-
'cept he ſhall have a deſign of giving her to an enemy of mine.

20. 'If upon the death of a Baron, or any other Homager of mine,
'there be left a Daughter that is an Heireſs, I will beſtow her with the
'advice of my Barons together with her Land.

21. 'If upon the death of the Husband, his Wife be left without Chil-
'dren, ſhe ſhall have her Dowry and right of Marriage, as long as ſhe
'ſhall keep her body according to Law; and I will not beſtow her, but
'according to her own liking. And if there be Children, either the
'Wife, or ſome one elſe near of kin ſhall be their Guardian and
'Truſtee of their Land, who ought to be juſt.

22. 'I give order, that my Homagers do in like manner regulate
'themſelves towards the Sons and Daughters and Wives of their
'Homagers.

23. 'The common Duty of Money or Coinage, which was taken
'through all Cities and Counties, which was not in the time of King
Edward, I do utterly forbid that henceforward this be no more done.

24. 'If any one of my Barons or Homagers ſhall be ſick and weak,
'according as he himſelf ſhall give or order any one to give his money,
'I grant it ſo to be given; but if he himſelf being prevented either by
'Arms or by Sickneſs, hath neither given his money, nor diſpoſed of it
'to give, then let his Wife, or Children, or Parents, and his lawful
'Homagers for his ſouls health divide it, as to them ſhall ſeem beſt.
And in *Canutus* his Laws, 'Let the Lord or Owner at his own diſcretion
'make a juſt diſtribution of what he hath to his Wife and Children and
'the next of kin. But at this time, and long ſince, Church men have
been as it were the Diſtributors and Awarders of the Goods of ſuch per-

Canut. cap. 63

ſons

ſons as dye Inteſtate, or without making their Wills, and every Biſhop as Ordinary in his own Dioceſs, is the chief Judge in theſe caſes.

2 Rich. 3. tit. Teſtamen. 4. *John Stratford* Arch-Biſhop of *Canterbury* ſaith it, and it is averred in the Records of our Law, that this Juriſdiction alſo concerning Wills, was of old long time ago in an ancient Conſtitution, intruſted to the Church by the conſent of the King and Peers. However, in what Kings time this was done, neither does he relate, nor do I any where find, as *William Lindwood* in his Provincial acknowledgeth. It is a thing very well known, that after Tryal of right, *Wills* were wont to be opened in the Eccleſiaſtical Court even in the Reign of *Henry* the Second (*Ralph Glanvill* is my witneſs) contrary to what order was taken in the Imperial Decrees of the *Romans*. And peradventure it will appear ſo to have been before *Glanvill*, as he will tell you, if you go to him; although you have, quoted by my ſelf ſome where, a Royal Reſcript or Order to a High Sheriff, 'That he do juſtly and without delay cauſe to 'ſtand (*i. e.* appoint and confirm) a reaſonable ſhare to ſuch an one; that is, that the Legatee may obtain and enjoy his right, what was bequeſted to him by the Sheriffs help. I come back now to my track again.

Lind provin. conſtit. de teſtam. c. Statutum & de immun. Eccleſ. c. Accidit, verb. Abolim. Glanvil. l. 7. c. 8. C. de teſtam. l. Conſulta divalia.

25. 'If any one of my Barons or Homagers ſhall make a forfeit, he ſhall 'not give a pawn in the ſcarcity of his money, as he did in the time of 'my Brother or my Father, but according to the quality of his forfei-'ture: nor ſhall he make amends, as he would have done heretofore in 'my Brothers or Fathers time.

26. 'If he ſhall be convicted of perfidiouſneſs or of foul miſdemea-'nors, as his fault ſhall be, ſo let him make amends.

27. 'The Foreſts by the common advice of my Barons, I have kept 'in mine own hand, in the ſame manner as my Father had them.

28. 'To thoſe Souldiers or Knights who hold and maintain their 'Lands by Coats of Male (that is, **per fee de hauberke**, that they may 'be ready to attend their Lords with Habergeons or Coats of Male com-'pleatly armed *Cap a pee*) I grant the Plough-lands of their Domains ac-'quitted from all Gelds, and from every proper Gift of mine, that, as 'they are eaſed from ſo great a Charge and Grievance, ſo they may 'furniſh themſelves well with Horſe and Arms, that they may be fit 'and ready for my ſervice, and for the defence of my Realm.

Hotom. Feud. Hubertic. in Diction.

29. 'I reſtore unto you the Law of King *Edward*, with other amend-'ments, wherewith my Father amended it. Thoſe amendments are put forth by *Lambard*. Hitherto out of thoſe Royal and general Letters, directed to all the Subjects.

CHAP.

CHAP. VII.

His order for reſtraint of his Courtiers. What the puniſhment of Theft. Coyners to loſe their Hands and Privy-members. Guelding a kind of death. What Half-pence and Farthings to paſs. The right meaſure of the Eln. The Kings price ſet for proviſions.

30. 'HE did by his Edict or Proclamation, reſtrain the Rapines, 'Thefts, and Rogueries of the Courtiers; ordering, that 'thoſe who were caught in ſuch pranks, ſhould have their Eyes with 'their Stones pulled out. This *Malmesbury* ſupplies us with. But *Florentius of Worceſter* and *Roger Hoveden* give the account, that he puniſhed Thieves with Death and Hanging, otherwiſe than that pleaſant and curious man *Thomas Moor* in his *Utopia* would have his people to be dealt with. Yet I am inclined rather to believe *Malmesbury*; not only upon the authority of the man, in compariſon of whoſe Roſe-beds (if you well weigh the Learning of that Age) the other pack of Writers are but ſorry low ſhrubs; but alſo upon the account of a nameleſs Monk, who in his Book of the Miracles of S. *Thomas of Canterbury*, tells us a ſtory of one *Eilward*, a poor mean fellow of Kingſweſton in *Berkſhire*, who being in the Reign of King *Henry* the Second condemned of Theft (he had it ſeems ſtoln a pair of Countrey Gloves and a Whetſtone) was puniſhed by loſing his Eyes and Privities; who coming with devotion to S. *Thomas* his Tomb, got an intire reſtitution of his diſappearing Members and Faculties, and was as good a man as ever he was. Perchance in this he is no witneſs of infallible credit. Let the ſtory of *Iphis* and *Ianthis*, and that of *Ceneus* try Maſteries with this for the Whetſtone; to our purpoſe the Writer is truſty enough. But in the firſt times of the *Normans*, I perceive, that the Halter was the ill conſequence of Theft. 'Let it be lawful for the Abbot of that Church, if he chance "to come in in the God ſpeed, to acquit an High-way-man or Thief 'from the Gallows. They are the words of the *Patent* with which *William* the Conquerour, to expiate the ſlaughter of *Harald*, conſecrated a Monaſtery to S. *Martin* near Haſtings on the Sea-coaſt of *Suſſex*, and priviledged it with choice and ſingular rights.

Morus in Utopiâ, l. 2.

De mirac. Thom. ap. Fox hiſt. eccleſ. lib. 4.

31. 'Againſt Cheats, whom they commonly call Coyners ('tis *Malmesbury* ſpeaks again) 'he ſhewed his particular diligence, permit-'ting no cheating fellow to eſcape ſcot-free, without loſing his Fiſt or 'Hand, who had been underſtood to have put tricks upon ſilly people 'with the traffick of their falſhood. For all that, he who hath tackt a ſupplement to *Florentius of Worceſter*, and *William Gemeticenſis* give out, that the Counterfeiters and Imbaſers of Coin had, over and above thoſe parts cut off, which *Galen* accounts to be the principal inſtruments for propagating of the kind. To whom *Hoveden* agrees, who writes in the Life of *Henry* the Firſt, 'That Coyners by the Kings order being taken, 'had their right Hands and their Privy-members cut off. Upon this account ſure, that he that was guilty of ſuch a wicked crime, ſhould have no hope left him of poſterity, nor the Common-wealth be in any further

Guli. Gemetic. de ducib. Norm. lib. 7. cap. 23.

further fear of thoſe who draw villainous principles from the loins of thoſe that beget them.

Feſt. Latro. Heb. לטע latro à לט latus. Bodin.de rep. l. 6. c.6. Diſt. 55. c. 4. ff. Ad leg. Corn. de Sicar. l. 4. §. ult. Bract. lib. 3. tract.2. c.23. & Stamf. plac. Coron. l. 1. c. 38.

Now at this very time and in former Ages too, this piece of Treaſon was puniſhed with Halter and Gallows; and that alſo of *Theft* not only in *England*, but almoſt in all Countreys, eſpecially *Robbery* upon the High-way, which is committed by thoſe who lay wait to ſurprize Paſſengers as they travel along upon one or other ſide of them; whence not only in the *Latin*, but in the holy Language alſo, a *High-way-man* hath his name. And truly among the Ancients *guelding* was lookt upon as a kind of death. The *Apoſtles Canons* give him the character and cenſure of a Manſlayer, who cuts off his own Privities (who lives all his life a Batchelor, ſay the *Talmudiſts*) and he who cuts off another mans, is in danger of the *Cornelian* Law concerning Murderers and Cut-throats; and ſo was it heretofore among the *Engliſh*.

32. 'He ordered (they are *Hoveden*'s words) that no half-penny, 'which alſo he commanded ſhould be made round, or farthing alſo, if it 'were intire, ſhould be refuſed.

33. 'He corrected the Merchants falſe Eln (ſo ſayes the Monk of *Malmesbury*) 'applying the meaſure of his Arm, and propoſing that to 'all people over *England*.

34. 'He gave order to the Courtiers, in whatſoever Cities or Vil-'lages he were, how much they were to take of the Countrey people '*gratis*, and at what price to buy things; puniſhing offendors herein ei-'ther with a great Fine of money, or with loſs of life.

CHAP.

CHAP. VIII.

The Regality claimed by the Pope, but within a while resumed by the King. The **Coverture** *dispensed with. A Subsidy for marrying the Kings Daughter. The* Courtesie of England. *Concerning Shipwrack. A Tax levied to raise and carry on a War.*

35. "ANſelm Arch-Biſhop of *Canterbury* labours earneſtly with the "Pope and his party, and at length obtains it with much ado, that 'from that time forward (you have it in *Florilegus* after other Writers) 'never any one ſhould be inveſted with a Paſtoral Staff or a Ring into a 'Biſhoprick or Abbacy by the King, or any Lay-perſon whatſoever in '*England*, (added out of *Malmesbury*) retaining however the priviledge 'of Election and Regality. There was a ſharp bickering about this buſineſs betwixt the King and *Anſelm*; and ſo between the Popes *Paſchalis* and *Calixtus* and *Henry* about that time Emperour. Both of them at leaſt pretendedly quit their right; our King humouring the Scene according to the preſent occaſion. 'For after *Anſelm*'s death, he did 'inveſt *Rodulphus* that came in his room by a Ring and a Paſtoral 'Staff.

36. He reſtored the Night-Torches or Lights which *William* the Firſt had forbidden; foraſmuch as he now had leſs reaſon to apprehend any danger from them, the Kingdom being in a better and firmer poſture. Stow, & v. Malmesb. l. 5. de geſt. reg. fol. 88.

37. To make up a portion for *Mawd* the Kings Daughter, married to *Henry* the Emperour, every *Hide* of Land paid a Tribute of Three Shillings. Here *Polydore* makes his deſcant. 'Afterward, ſayes he, 'The reſt of the Kings followed that courſe of raiſing Portions for the 'beſtowal of their Daughters; ſo tenacious hath poſterity alway been 'of their own advantages. It is ſcarce to be doubted, that the right of raiſing money for the marrying of the Lords Daughters by way of Aid or Subſidy upon the Tenants or Dependants, is of a more ancient original. Neither would I fetch it from the mutual engagement of *Romulus* his Patrons and Clients, or Landlords and Tenants, or from *Suetonius* his *Caligula*: rather from the old Cuſtoms of the *Normans*, more ancient than King *Henry*; where that threefold Tribute is explained by the name of Aid, which the Patent granted by King *John* in favour of publick liberty mentions in theſe words: 'I will impoſe no Eſcuage or Aid 'in our Realm, but by the common advice of our Realm; unleſs it be to 'ranſom our Body, and to make our firſt-born Son a Soldier or Knight, 'and to marry our eldeſt Daughter once.

38. Some aſcribe that Law to *Henry*, which Lawyers call the *Courteſie of England*; whereby a man having had a Child by his Wife, when ſhe dyes, enjoyes her Eſtate for his life. Spec. Juſt. cap. des articles, &c.

39. He made a Law, that poor ſhipwrackt perſons ſhould have their Goods reſtored to them, if there were any living creature on Ship-board, that eſcaped drowning. Foraſmuch as before that time, whatſoever through the misfortune of ſhipwrack was caſt on Shoar, was adjudged to the *Exchequer*; except that the perſons who ſuffered ſhipwrack and had eſcaped alive, did themſelves within ſuch a time refit and repair the Veſſel. So the Chronicle of the Monaſtery of S. *Martin de Bello*. This right is called Wreck, or if you will, Hareck, of the Sea. How agreeable to the Law of Nations, I trouble not my ſelf to enquire. That more ancient Cuſtom, is as it were ſuitable to the *Norman* uſage. Now at this time our Lawyers (and that the more modern Law of *Edward* the Firſt) paſs judgement according to the more correct Copy of King *Henry*. And they reckon it too among the moſt ancient Cuſtoms of the Kingdom. Did therefore King *Richard* order, or did *Hoveden* relate this to no purpoſe, or without any need? 'If one who ſuffers ſhipwrack 'dye in the Ship, let his Sons or Daughters, his Brethren or Siſters have 'what he left, according as they can ſhew and make out that they are 'his next heirs. Or if the deceaſed have neither Sons nor Daughters, 'nor Brothers nor Siſters, the King is to have his Chattels. Can one imagine, that this Law he made at *Meſſina*, when he was engaged in War, was calculated only for that time or place? Certainly in the Archives there is elſewhere to be met with as much as this.

Lamb. Itinerar. Cant. Weſt. 1. c. 4.

Pat. 46 Ed. 3.

40. That he might with a ſtout Army bear the brunt of *Baldwin* Earl of *Flanders* and *Louis* King of *France*, who had conſpired, being bound by mutual Oaths to one another with the Duke of *Anjou*, to take away from King *Henry* by force of Arms the Dutchy of *Normandy*, 'he firſt of all (tis *Polydore* avers it) 'laid a heavy Tax upon the people, to carry on 'the new War; which thing with the Kings that followed after, grew 'to be a cuſtom.

He was the laſt of the *Normans* of a Male deſcent, and as to the method of our undertaking, here we treat of him laſt.

CHAP.

CHAP. IX.

In King Stephen's *Reign all was to pieces. Abundance of Caſtles built. Of the priviledge of Coining. Appeals to the Court of* Rome *now ſet on foot. The* Roman *Laws brought in, but diſowned. An inſtance in the* Wonder-working Parliament.

AS of old, unleſs the Shields were laid up, there was no Dancing at Weddings; ſo except Arms be put aſide, there is no pleading of Laws. That Antipathy betwixt Arms and Laws, *England* was all over ſenſible of, if ever at any time, in the Reign of K. *STEPHEN*, Count of *Blois*, King *Henry*'s Nephew by his Siſter *Adela*. For he did not only break the Law and his Oath too to get a Kingdom, but alſo being ſaluted King, by thoſe who perfidiouſly oppoſed *Maud* the right and true heir of King *Henry*, he reigned with an improved wickedneſs. 'For he 'did ſo ſtrangely and odly chop and change every thing (it is *Malmsbury* ſpeaks it) 'as if he had ſworn only for this intent, that he might 'ſhew himſelf to the whole Kingdom, a Dodger and Shammer of his 'Oath. But, as he ſaith,

——*perjuros merito perjuria fallunt?* Ovid. Art. Am. lib. 1.

that is,

Such men as Perjuries do make their Trade,
By their own Perjuries moſt juſtly are betray'd.

They are things of cuſtom to which he ſwore, and ſuch as whereby former priviledges are ratified, rather than new ones granted. However, ſome things there are, that may be worth the tranſcribing.

41. 'Caſtles were frequently raiſed ('tis *Nubrigenſis* relates it) in 'the ſeveral Counties by the bandying of parties; and there were in *En*-'*gland* in a manner as many Kings, or rather as many Tyrants, as Lords 'of Caſtles, having ſeverally the ſtamping of their own Coin, and a 'power of giving Law to the Subjects after a Royal manner. Then was the Kingdom plainly torn to pieces, and the right of Majeſty ſhattered, which gains to it ſelf not the leaſt luſtre from ſtamping of Money. Though I know very well, that before the *Normans*, in the City of *Rochester*, *Canterbury*, and in other Corporations and Towns, Abbots and Biſhops had by right of priviledge their Stampers and Coiners of Money. V. Leg. Athelſtan. 14.

42. Next to the King, *Theobald* Arch Biſhop of *Canterbury* preſided over the Council of *London* (where there were alſo preſent the Peers of the Realm) 'which buzzed with new appeals. For in *England* (tis *Henry of Huntington* ſayes it) 'appeals were not in uſe, till *Henry* 'Biſhop of *Wincheſter*, when he was Legate, cruelly intruded them to 'his own miſchief. Wherefore what Cardinal *Bellarmin* has writ, be- Bellarm. l. 2. de Rom. Pontif. c. 21.

ginning at the Synod of *Sardis*, concerning the no body knows how old time of the univerſal right of appealing to the Pope of *Rome*, does not at all, as to matter of fact, ſeem to touch upon this Kingdom of ours by many and many a fair mile.

Polycrat. l. 8. c. 22.

43. 'In the time of King *Stephen* (ſo 'tis in the *Polycraticon* of *John of Salisbury*) 'the *Roman* Laws were baniſht the Realm, which the Houſe 'of the Right Reverend *Theobald* Lord Primate of *Britanny* had fetcht or 'ſent for over into *Britanny*. Beſides, it was forbidden by Royal Pro-'clamation, that no one ſhould retain or keep by him the Books. If you underſtand the Laws of the Empire (I rather take them to be the Decrees of the Popes) it will not be much amiſs, out of the Parliament Records to adjoyn theſe things of later date. In the Parliament holden by *Richard* of *Bourdeaux*, which is ſaid to have *wrought Wonders*, Upon the Impeachment of *Alexander* Nevil Arch-Biſhop of *Canterbury*, *Robert* Vere Duke of *Ireland*, *Michael* Pole Earl of *Suffolk*, *Thomas* Duke of *Gloceſter*, *Richard* Earl of *Arundel*, *Thomas* Beauchamp Earl of *Warwick*, and others, That they being intruſted with the management of the Kingdom, by ſoothing up the eaſie and youthful temper of the King, did aſſiſt one another for their own private intereſt, more than the publick, well near to the ruine and overthrow of the Government it ſelf; the Common Lawyers and Civilians are conſulted with, about the form of drawing up the Charge; which they anſwer all as one man, was not agreeable to the rule of the Laws. But the Barons of Parliament reply, That they would be tyed up to no rules, nor be led by the punctilioes of the *Roman* Law, but would by their own authority paſs judgement; *pur ce que la royalme d' Angleterre n' eſtoit devant ces heures, n'y à l' entent de noſtre dit Seigneur le Roy & Seigneurs de Parlament unque ne ſerra rules ne gouvernes per la Loy Civil:* that is, *inaſmuch as the Realm of* England *was not before this time, nor in the intention of our ſaid Lord the King and the Lords of Parliament ever ſhall be ruled or governed by the Civil Law.* And hereupon the perſons impleaded are ſentenced to be baniſhed.

Rot. Parl. 11 Rich. 2.

But here is an end of *Stephen:* He fairly dyed.

CHAP.

CHAP. X.

In King Henry *the Seconds time, the Caſtles demoliſhed. A Parliament held at* Clarendon. *Of the Advowſon and Preſentation of Churches. Eſtates not to be given to Monaſteries without the Kings leave. Clergymen to anſwer in the Kings Court. A Clergyman convict, out of the Churches Protection. None to go out of the Realm, without the Kings leave. This Repealed by King* John. *Excommunicate Perſons to find Surety. Laymen how to be impleaded in the Eccleſiaſtical Court. A Lay-Jury to ſwear there, in what caſe. No Homager or Officer of the Kings to be Excommunicated, till He or his Juſtice be acquainted.*

AT length, though late firſt, *Henry* the Son of *Jeoffry Plantagenet*, Count of *Angers* by the Empreſs *Maud*, came to his Grandfatherrs Inheritance. Having demoliſhed and levelled to the ground, the Caſtles which had, in King *Stephen*'s time, been built, to the number of eleven hundred and fifteen; and having retrieved the right of Majeſty into its due bounds, he confirmed the Laws of his Grandfather. 'Moreover, at *Clarendon* in *Wiltſhire*, near *Salisbury*, *John* of *Oxford* being 'Preſident, by the Kings own Mandate, there being alſo preſent the 'Arch-Biſhops, Biſhops, Abbots, Priors, Earls, Barons, and Peers of 'the Realm, other Laws are recognized and paſſed; whilſt at firſt thoſe who were for the *King* on one ſide, thoſe who were for the *Pope* on the other, with might and main ſtickle to have it go their way; theſe latter pleading, that the ſecular Court of Juſtice did not at all ſuit with them, upon pretence that they had a priviledge of Immunity. But this would not ſerve their turn; for ſuch kind of Conſtitutions as we are now ſetting down, had the Vogue.

44. 'If any Controverſie concerning the Advowſon and Preſenta-'tion of Churches, ariſe betwixt Laymen, or betwixt Laymen and Cler-'gymen, or betwixt Clergymen among themſelves; let it be handled 'and determined in the Court of the Lord our King.

45. 'The Churches which are in the Kings Fee, cannot be given to 'perpetuity without his aſſent and conceſſion. Even in the *Saxons* times Camden. it ſeems it was not lawful, without the Kings favour firſt obtained, to give away Eſtates to Monaſteries; for ſo the old Book of *Abington* ſays. 'A Servant of King *Ethelred*'s called *Ulfric Spot*, built the Abby of Bur-'ton in *Staffordſhire*, and gave to it all his Paternal Eſtate, appraiſed at A. 1004. 'ſeven hundred pounds; and that this donation might be good in Law, 'he gave King *Ethelred* three hundred Marks of Gold for his confirmati-'on of it, and to every Biſhop five Marks, and over and above to *Alfric* 'Arch-Biſhop of *Canterbury*, the Village of *Dumbleton*.

46. 'Clergymen being arighted and accuſed of any matter whatſo-'ever, having been ſummoned by the Kings Juſtice, let them come into 'his Court, there to make anſwer to that, of which it ſhall be thought

'fit

'fit that there anſwer ought to be made: So that the Kings Juſtice ſend 'into the Court of Holy Church, to ſee after what manner the buſineſs 'there ſhall be handled.

47. 'If a Clergyman ſhall be convicted, or ſhall confeſs the Fact; the 'Church ought not from thenceforth to give him protection.

48. 'It is not lawful for Arch-Biſhops, Biſhops, and Perſons of the 'Kingdom, to go out of the Realm without leave of our Lord the King: 'And if they do go out, if the King pleaſe, they ſhall give him ſecurity, 'that neither in going, nor in returning, or in making ſtay, they ſeek 'or deviſe any miſchief or damage againſt our Lord the King. Whether you refer that Writ, we meet with in the Regiſter or Record, *NE EXEAS REGNUM*, for Subjects not to depart the Kingdom to this time or inſtance, or with *Polydore Virgil* to *William Rufus*, or to later times, is no very great matter: Nor will it be worth our while, curiouſly to handle that queſtion: For who, in things of ſuch uncertainty, is able to fetch out the truth? Nor will I abuſe my leaſure, or ſpend time about things unapproachable.

Metamor. 14 fo. *An ſit & hic dubito, ſed & hic tamen anguror eſſe.*

Says the Poet in another caſe: And ſo ſay I.

Whether it be here or no,
Is a Queſtion, I confeſs:
And yet for all that, I trow,
Here it is too, as I gueſs.

Out of King *John*'s great Charter, as they call it, you may alſo compare or make up this Repeal of that Law in part. 'Let it be lawful hence-'forward for any one to go out of our Realm, and to return ſafely and 'ſecurely by Land and by Water, upon our Royal word; unleſs in time 'of War, for ſome ſhort time, for the common advantage of the King-'dom; excepting thoſe that are impriſoned and out-lawed according to 'the Law of the Kingdom, and any People or Nation, that are in actual 'War againſt us: And Merchants, concerning whom let ſuch Order be 'taken, as is afore directed. I return to King *Henry*.

49. 'Excommunicate Perſons ought not to give ſuretiſhip for the Re-'mainder, nor to take an Oath; but only to find Surety and Pledge, 'to ſtand to the Judgment of the Church, that they may be ab-'ſolved.

50. 'Perſons of the Laity ought not to be accuſed or impleaded but 'by certain and legal Accuſers and Witneſſes, in the preſence of the Arch-'Biſhop or Biſhop; ſo that the Arch Deacon may not loſe his right, nor 'any thing which he ought to have therefrom.

51. 'If

51. 'If they be ſuch Perſons who are in fault, as no one will or dare 'to accuſe; let the Sheriff being thereunto required by him, cauſe twelve 'legal men of the Voiſinage or of the Village, to ſwear before the Bi-'ſhop, that they will manifeſt or make known the truth of the matter 'according to their Conſcience.

52. 'Let no one who holds of the King in *capite*, nor any one of the 'Kings Officers or Servants of his Domain, be excommunicated; nor 'the Lands of any of them be put under an Interdict or prohibition; un-'leſs firſt our Lord the King, if he be in the Land, be ſpoke with; or his 'Juſtice, if he be out of the Land, that they may do right by him: And 'ſo that what ſhall appertain to the Kings Court, may be determined 'there; and as to what ſhall belong to the Eccleſiaſtical Court, it may 'be ſent thither and there treated of.

CHAP.

CHAP. XI.

Other Laws of Church affairs. Concerning Appeals. A Suit betwixt a Clergyman and a Layman, where to be Tryed. In what case one, who relates to the King, may be put under an Interdict. The difference betwixt that and Excommunication. Biſhops to be preſent at Tryals of Criminals, until Sentence of Death, &c. paſs. Profits of vacant Biſhopricks, &c. belong to the King. The next Biſhop to be Choſen in the Kings Chappel, and to do Homage before Conſecration. Deforcements to the Biſhop, to be righted by the King. And on the contrary, Chattels forfeit to the King, not to be detained by the Church. Pleas of debts whatſoever in the Kings Court. Yeomens Sons not to go into Orders without the Lords leave.

V. Rog. Hoveden. fol. 303.

53. 'CONcerning Appeals, if at any time there ſhall be occaſion for them, they are to proceed from the Arch-Deacon to the Biſhop, and from the Biſhop to the Arch-Biſhop; and if the Arch-Biſhop ſhall be wanting in doing of Juſtice, they muſt come in the laſt place to our Lord the King; that by his precept or order, the Controverſie may be determined in the Arch-Biſhops Court, ſo as that it ought not to proceed any further without the Kings aſſent. This Law, long ſince, the famous Sir *Edward Coke* made uſe of, to aſſert and maintain the Kings Eccleſiaſtical Juriſdiction, as a thing not of late taken up by him, but anciently to him belonging.

Coke præfat. ad Lib. 6.

54. 'If a Claim or Suit ſhall ariſe betwixt a Clergyman and a Layman, or betwixt a Layman and a Clergyman, concerning any Tenement which the Clergyman would draw to the Church, and the Layman to a Lay-fee; it ſhall by the recognizance of twelve legal men, upon the conſideration and adviſement of the Lord Chief Juſtice, be determined, whether the Tenement do appertain to Alms (*i. e.* to the Church) or to Lay-Eſtate, before the Kings own Juſtice. And if it ſhall be recognized or adjudged to appertain to Alms; it ſhall be a Plea in the Eccleſiaſtical Court: But if to a Lay-fee, unleſs they both avow or avouch the Tenement from the ſame Biſhop or Baron, it ſhall be a Plea in the Kings Court. But if each of them ſhall for that fee avouch the ſame Biſhop or Baron, it ſhall be a Plea in that Biſhops or Barons Court; ſo that he who was formerly ſeiſed, ſhall not, by reaſon of the Recognizance made, loſe the Seiſin, till it ſhall by Plea be deraigned.

55. 'He who ſhall be of a City, or a Caſtle, or a Burrough, or a Manner of the Kings Domain, if he ſhall be cited by an Arch-Deacon or a Biſhop, upon any miſdemeanour, upon which he ought to make anſwer to him, and refuſe to ſatisfie upon their ſummons or citations; they may well and lawfully put him under an Interdict or Prohibition; but he ought not to be Excommunicated. (By the way) ſeaſonably remark out of the Pontificial Law, that that *Excommunication*, they call the

the greater, removes a man and turns him out from the very Communion and Fellowſhip of the Faithful; and that an *Interdict*, as the leſſer Excommunication, ſeparates a man, and lays him aſide only, forbidding him to be preſent at Divine Offices, and the uſe of the Sacraments.) 'I ſay he ought not to be Excommunicated, before that the Kings Chief 'Juſtice of that Village or City be ſpoken with, that he may order him 'to come to ſatisfaction: And if the Kings Juſtice fail therein, he ſhall 'be at the Kings mercy, and thereupon or after that the Biſhop may pu-'niſh him upon his impleadment, with the Juſtice of the Church.

56. 'Arch-Biſhops, Biſhops, and all Perſons whatſoever of the King-'dom, who hold of the King *in capite*, and have their poſſeſſions from 'our Lord the King in nature of a Barony, and thereupon make anſwer 'to the Kings Juſtices and Officers, and perform all Rights and Cuſtoms 'due to the King as other Barons do; they ought to be preſent at the 'Tryals of the Court of our Lord the King with his Barons, until the 'loſing of Limbs or death, be adjudged to the party tried.

57. 'When an Arch-Biſhoprick or Biſhoprick, or Abbacy, or Priory 'of the Kings Domain ſhall be void; it ought to be in his hand, and 'thereof ſhall he receive all the profits and iſſues as belonging to his Do-'main: And when the Church is to be provided for, our Lord the King 'is to order ſome choice perſons of the Church, and the Election is to be 'made in the Kings own Chappel, by the aſſent of our Lord the King, 'and by the advice of thoſe perſons of the Kingdom, whom he ſhall call 'for that purpoſe; and there ſhall the Perſon Elect (ſaving his order) 'before he be Conſecrated, do Homage and Fealty to our Lord the King, 'as to his Liege Lord, for his life and limbs, and for his Earthly Ho-'nour.

58. 'If any one of the Nobles or Peers do deforce to do Juſtice to an 'Arch-Biſhop, Biſhop, or Arch-Deacon, for themſelves or thoſe that 'belong to them; the King in this caſe is to do juſtice.

59. 'If peradventure any one ſhall deforce to the Lord the King his 'Right; the Arch-Biſhop, Biſhop, and Arch-Deacon, ought then in that 'caſe to do juſtice (or to take a courſe with him) that he may give the 'King ſatisfaction.

60. 'The Chattels of thoſe who are in the Kings forfeit, let not the 'Church or Church-yard detain or keep back againſt the juſtice of the 'King; becauſe they are the Kings own, whether they ſhall be found in 'Churches or without.

61. 'Pleas of debts which are owing, either with ſecurity given, or 'without giving ſecurity, let them be in the Kings Court.

62. 'The Sons of Yeomen or Country people, ought not to be ordain-'ed or go into holy Orders, without the aſſent of the Lord, of whoſe 'Land they are known to have been born.

CHAP. XII.

The Statutes of Clarendon *miſ-reported in* Matthew Paris; *amended in* Quadrilegus. *Theſe Laws occaſioned a Quarrel between the King and* Thomas a Becket. *Witneſs* Robert *of* Gloceſter, *whom he calls* Pumen. *The ſame as* Ruſticks, *i. e.* Villains. *Why a Biſhop of* Dublin *called* Scotch-Villein. *Villanage before the* Normans *time.*

I Confeſs there is a great difference between theſe Laws and the Statutes of *Clarendon*, put forth in the larger Hiſtory of *Matthew Paris*, I mean thoſe mangled ones; and in ſome places, what through great gaps of ſence, diſjointings of Sentences, and miſplacings of words, much depraved ones, whoſe misfortune I aſcribe to the careleſneſs of Tranſcribers. But the latter end of a Manuſcript Book commonly called *Quadrilegus*, (wherein the Life of *Thomas*, Arch-Biſhop of *Canterbury*, is out of four Writers, to wit, *Hubert* of Boſeham, *John* of *Saliſbury*, *William* of *Canterbury*, and *Alan*, Abbot of *Tewksbury*, digeſted into one Volume) hath holp us to them amended as you may ſee here, and ſet to rights. It is none of our buſineſs to touch upon thoſe quarrels, which aroſe upon the account of theſe Laws betwixt the King and *Thomas* of *Canterbury*: Our Hiſtorians do ſufficiently declare them. In the mean time, may our Poet of *Gloceſter* have leave to return upon the Stage, and may his Verſes written in ancient Dialect, compriſing the matter which we have in hand, be favourably entertained.

No man ne might thenche the lobe that there was
Bitwene the K. H. and the good man S. Thomas;
The diuel had enui therto, and ſed bitwen them feu,
Alas, alas thulke ſtond, for all to well it greu.
For there had ere ibe kings of Luther dede
As W. Baſtard, and his ſon W. the rede.
That Luther Laws made inou, and held in al the lond
The K. nold not beleue the lawes that he fond,
Ne that his elderne hulde, ne the godeman S. Thomas
Thought that thing age right neuer law nas.
Ne ſothnes and cuſtom mid ſtrength up iholde,
And he wiſt that bre dere Lourd in the Goſpel told
That he himſelfe was ſothnes, and cuſtum nought,
Therufore Luther cuſtumes he nould graent nought.
Ne the K. nould bileue that is elderne ad iholde,
So that conteke ſprung bituene them manifold.
The K. bfou to right law mani Luther cuſtume,
S. Thomas they withſed, and granted ſome.
The Lawes that itholde now tell he granted bawe.
Yuf a puman hard a ſone to clergi ifraw
He ne ſall without is lourdes icrouned nought be
For puman ne mai nought be made agen is lourds will free.

Thoſe

Thoſe that are born Slaves, or that other ſort of ſervants termed *Villains*, he calls by the name of Yumen. We call free-born Commoners, alike as Servants, as it were with a badg of ignobleneſs or ungentility, Yeomen; and thoſe who of that number are married men, Gommen; for it was Gomman in the old *Dutch*, not Goodman, as we vulgarly pronounce it, which ſignified a married man. Words, as I am verily perſwaded, made from the Latin, *Homines*; which very word, by *Ennius* and *Feſtus*, according to the *Oſcan* Idiom, is written *Hemones*, and in our Language, which comes pretty near that ſpelling of the Poet, Yeomen. And the *Etymon* or Origination of the word it ſelf, is very much confirmed by the opinion of ſome of our own Country Lawyers, who take (but with a miſtake) *Homines*, *i. e.* men that do homage, and *Nativos*, *i. e.* born Slaves, in ancient Pleas to be terms equipollent, and of the ſame importance. The Conſtitution of *Clarendon* ſtyle thoſe *Ruſticks* or Countrymen, whom he calls Yumen; and *Ruſticks* and *Villains* (thoſe among the *Engliſh* were ſlaves or ſervants) were anciently ſynonymous words, meaning the ſame thing. For whereas *Henry Londres*, Arch Biſhop of *Dublin*, had treacherouſly committed to the flames, the Charters of his Ruſtick Tenants, the Free Tenants called him, as we read in the Annals of *Ireland*, Scorch-Villein; as if one would ſay, the burner or firer of Villains.

40 Aſſiſ. pl. 21. & 32. Ed. 3. tit. Barr. 251.

Annal. Hiber. 1212. ſub Henr. 3.

Nor ſhould I think it unſeaſonable in this place, to take notice of a miſtake or overſight of *Thomas Spott*, a Monk of *Canterbury*; who writes, that the *Engliſh*, before the *Norman* Conqueſt, knew nothing of private ſervitude or bondage; *i. e.* had no ſuch thing as Villanage among them: For he is convinced both by the Maid of *Andover*, King *Edgar*'s Miſs, as alſo by the Laws ſigned and ſealed by King *Ina*, and by that Donation or Grant *Torald* of *Bukenhale* made to *Walgate*, Abbot of *Crowland*: wherein among other things a great many ſervants are mentioned, with their whole ſuits and ſervices. Take it alſo out of the Synod of *London*, *Anſelme* being Preſident of it (ſince here belike there is mention made of Servants) *That no one henceforward preſume to uſe that ungodly practice, which hitherto they were wont in* England *to do, to ſell, or put to ſale, men*, (that is, *Servants*) *like brute Beaſts.*

Malmsb. l. 1. de geſt. Pont. Malmsb. l. 2. de geſt. reg. c. 8. & Ingulph. fol. 519.

But we do not do civilly to interrupt the Poet: We muſt begin again with him; he once more tunes his Pipes.

Another thing he granted eke as ye mow nobiſe;
Yuf a man of holi Chirch hath eni lay fee,
Parſon, other what he be, he ſhal do therefore
Kings ſervice that there falth, that is right ne be forfore,
In plaiding and in aſſiſe be and in judgement alſo.
Vote war man ſhal be bilemed, other to deth ido.
He granted eke yuf eni man the Kings traitor were,
And eni man is chateux to holi chirch here
That holi chirch ne ſolde nought the chateux there let
That the K. there other is as is owne is ne wette.
Vor all that the felon hath the Kings it is
And eche man mai in holi church is owne take iwis.
He granted eke that a chirche of the Kings fe
In none ſtede ene and ever ne ſhold igiue be

As to hous of religion, without the Kings lebe,
And that he other the patron the gift firſt gabe.
S. Thomas granted well theſe and other mo
And theſe other he withſtede that did him well woe.

I. Luf bituene twei leud men were eni ſtriding,
Other bituene a leud and a clerc, for holi chirch thing
As for voulon of chirch whether ſhold the chirch giue,
The K. wold that in his court the ple ſtold be driue;
For as much as a leud man that the o parti was
Chanlithe was under the K. & under no biſhop nas.

CHAP.

CHAP. XIII.

The Poet gives account which of those Laws were granted by Thomas a Becket, *which withstood.* **Leudemen** *signifies Laymen, and more generally all illiterate Persons.*

THat which this Author of ours calls **Leudemen**, the Interpreters of Law, both our Common and the Canon Law call *Laicks*, or *Laymen*. For as Λαὸς, *i. e.* people, as it it is derived by *Cæsar Germanicus*, upon *Aratus* his *Phænomena* after *Pindar*, ἀπὸ τῆ λᾶυ, *i. e.* from a *Stone*, denotes a hard and promiscuous kind of men; so the word *Leudes* imports the illiterate herd, the multitude or rabble, and all those who are not taken into holy Orders. *Justus Lipsius* in his *Poliorcetick*s, discourses this at large; where he searches out the origination of *Leodium* or *Liege*, the chief City of the *Eburones* in the *Netherlands*. As to what concerns our language, *John Gower* and *Jeoffry Chaucer*, who were the Reformers and Improvers of the same in Verse, do both make it good. Thus *Jeoffry*.

Cæs. Germ. ad Arat. in Aquario. Pindar. Olym. 9. Lipsi. Poliorcet. lib. 1. dissert. 2.

Chauc. in Prolog. of the Summers tale.

No wonder is a leude man to rust
If a Priest be foule on whom we trust.

However, that it signifies an illiterate or unlearned person, as well as one not yet in orders; what he saith elsewhere, informs us.

This every leud Vicar and Parson can say.

And *Peter* of *Blois*, and others, use this expression; *as well Laymen as Scholars*. But let not *Chaucer* take it ill, that here he must give way to our *Gloucester* Muse.

Pet. Blesens. app. ad Ingulph.

II. Another was that no clerk, ne bishop hath mo,
Ne sholde without Kings leue out of the lond go.
And that hii sholde swore up the boke ywis.
That hii ne sold purchas no ubel the K. ne none of is.

III. The thrid was yuf eni man in mausing were I brought,
And suth come to amendment, ne age were nought
That he ne suore up the bor, at bozowes find solde
To stand to that holy Chirch there of him toky wold.

IV. The berth was that no man that of the K. huld ought
In theise oz in eni serdise in mausing were ibrought,
Bote the wardeins of holy chirch that brought him thereto,
The K. sede oz is bailifes wat he ad misdo,
And loked berst were thei to amendment it bring,
And bote hii wolde by their leue do the mausing.

V. The bist was, that bishoprikes and Abbeis also
That vacans were of prelas in the K. hand were ido,

And

And that the K. ſold all the land as is owne take,
Uoꝛt at laſt that him luſt eni pꝛelat there make.
And than thulke pꝛelat ſould in is chapel ichoſe be.
Of is clarks which he would to ſuch pꝛelace biſe.
And than wan he were ichoſe in is chapel right pere,
Homage he ſolde him do ar he confirmed were.

VI. The ſixt was puf eni play to chapitle were idꝛaw,
And eni man made is appele, puf me dude him unlaw,
That to the Biſhop from Ercedeken is appele ſold make,
And from Biſhop to Arcebiſſop and ſuth none other take,
And but the Ercebiſops court to right him wold bꝛing,
That he ſold from him be cluthe biuoꝛe the King.
And from the K. non other mo ſo that attan end
Plaining of holi chirch to the K. ſhold wend.
And the K. amend ſolde the Ercebiſſops dede,
And be as in the Popes ſtude, and S. Thomas it withſtede.

VII. The ſeuethe was that plaiding that of det were
To yeld wel thoꝛu truth ipligbt, and nought ihold nere
Althei thoꝛu truth it were, that ꝓle ſold be ibꝛought
Biuoꝛe the K. and is bailies and to holy chirch nought.

VIII. The eighth that in the lond citation none nere
Thoꝛu bull of the Pope of Rome, and clene bileued were.

IX. The nithe was that Peters pence that me gadereth manion
The Pope nere nought on iſend, ac the K. echone.

X. The tethe was puf eni Clarke as felon were itake,
And boꝛ felon ipꝛoved and ne might it not forſake,
That me ſold him berſt diſoꝛdein and ſuth thoꝛu there law,
And thoꝛu judgement of the land bong him other to dꝛaw.
Uoꝛ theſe and boꝛ other mo the Godeman S. Thomas
Fleu berſt out of England and eke imartred was,
Uoꝛ he ſei there nas bote o way other he muſt ſtiffe be
Other holy chirch was ilent, that of right was ſafre.

CHAP.

CHAP. XIV.

The Pope abſolves Thoms a Becket *from his Oath, and damns the Laws of* Clarendon. *The King reſents it, writes to his Sheriffs, Orders a Seiſure. Penalties inflicted on Kindred. He provides againſt an Interdict from* Rome. *He ſummons the Biſhops of* London *and* Norwich. *An Account of* Peter Pence.

TO the Laws of *Clarendon*, which I ſpoke of, the States of the Kingdom (the *Baronage*) and with them the Arch-Biſhop of *Canterbury*, took their Oaths in ſolemn manner, calling upon God. There were Embaſſadors ſent to Pope *Alexander* the third, that there might be that bottom alſo, that he would further confirm and ratifie them. But he was ſo far from doing that, that he did not only pretend that they did too much derogate from the priviledge of the Clergy, and wholly refuſe to give his aſſent to them; but alſo having abſolved *Thomas* the Arch-Biſhop, at his own requeſt, from the obligation of that Oath he had bound himſelf with, he condemned them as impious, and ſuch as made againſt the intereſt and honour of holy Church. King *Henry*, as ſoon as he heard of it, took it, as it was fit he ſhould, very much in dudgeon; grievouſly and moſt deſervedly ſtorming at the inſolence of the *Roman* Court, and the Treachery of the Biſhop of *Canterbury*. Immediately Letters were diſpatcht to the ſeveral Sheriffs of the reſpective Counties, 'That if any Clerk or Layman in their Bayliwicks, ſhould appeal to the 'Court of *Rome*, they ſhould ſeiſe him and take him into firm cuſtody; 'till the King give order what his pleaſure is: And that they ſhould ſeiſe 'into the Kings hand, and for his uſe, all the Revenues and Poſſeſſions of 'the Arch-Biſhops Clerks; and of all the Clerks that are with the Arch-'Biſhop; they ſhould put by way of ſafe pledge the Fathers, Mothers, 'and Siſters, Nephews and Neeces, and their Chattels, till the King 'give order what his pleaſure is. I have told the Story out of *Matthew Paris*.

You ſee in this inſtance a penalty, where there is no fault: It affects or reaches to their Kindred both by Marriage and Blood; a thing not unuſual in the declenſion of the *Roman* Empire after *Auguſtus* his time. *But let miſdemeanors hold or oblige thoſe who are the Authors of them* (was the Order of *Arcadius* and *Honorius*, Emperors, to the Lord Chief Juſtice *Eutychianus*) *nor let the fear of puniſhment proceed further than the offence is found.* A very uſual right among the *Engliſh*, whereby bating the taking away the Civil Rights of Blood and Nobility, none of the Poſterity or Family of thoſe who loſe their honours, do for the moſt hainous crimes of their Parents, undergo any penalties.

C. de pœnit. l. 21. ſancimus.

V. Canut. leg. 74.

But this was not all, in thoſe Letters I mentioned, he added threats alſo.

63. 'If any one ſhall be found carrying Letters or a Mandate from the 'Pope, of *Thomas*, Arch-Biſhop of *Canterbury*, containing an interdiction 'of Chriſtian Religion in *England*, let him be ſeiſed and kept in hold, 'and let Juſtice be done upon him without delay, as a Traitor againſt the 'King and Kingdom. This *Roger* of *Hoveden* ſtands by, ready to witneſs.

64. 'Let

64. 'Let the Biſhops of *London* and *Norwich* be ſummon'd, that they may 'be before the Kings Juſtices to do right (*i. e.* to anſwer to their charge, 'and to make ſatisfaction) that they have contrary to the Statutes of 'the Kingdom, interdicted the Land of Earl *Hugh*, and have inflicted a 'ſentence of Excommunication upon him. This was *Hugh Bigod*, Earl of *Norfolk*.

65. 'Let St. *Peters* pence be collected, or gathered, and kept ſafe. Thoſe *Pence* were a Tribute or Alms granted firſt by *Ina* King of the *Weſt-Saxons*; yearly at *Lammas* to be gathered from as many as 'had thirty pence (as we read it in the *Confeſſor*'s Laws) 'of live mony in their houſe. Theſe were duly, at a ſet time, paid in, till the time of *Henry* the eighth, when he ſet the Government free from the Papal Tyranny: About which time *Polydore Virgil* was upon that account in *England*, Treaſurer, or Receiver general. I thought fit to ſet down an ancient brief account of theſe pence, out of a Reſcript of Pope *Gregory* to the Arch-Biſhops of *Canterbury* and *York*, in the time of King *Edward* the ſecond.

Fox. in hiſt. Eccleſ. Ed. 2. Reſcript. dat. 10. Kal. Maii ap. Veterem urbem, Pontificat. 2.

Dioceſs	li.	s.	d.
Canterbury	07	18	00
London	16	10	00
Rocheſter	05	12	00
Norwich	21	10	00
Ely	05	00	00
Lincoln	42	00	00
Coventry	10	05	00
Cheſter	08	00	00
Wincheſter	17	06	08
Exeeter	09	05	00
Worceſter	10	05	00
Hereford	06	00	00
Bath	12	05	00
York	11	10	00
Salisbury	17	00	00

It amounts to three hundred *Marks* and a *Noble*; that is, two hundred *Pounds* ſterling, and ſix *Shillings* and eight *Pence*.

You are not to expect here the murder of *Thomas a Becket*, and the ſtory how King *Henry* was purged of the crime, having been abſolved upon hard terms.

Conveniunt cymbæ vela minora meæ.

My little Skiff bears not ſo great a Sail.

CHAP.

CHAP. XV.

A Parliament at Northampton. *Six Circuits ordered. A Liſt of the then Juſtices. The Jury to be of twelve Knights. Several ſorts of Knights. In what caſes Honorary Knights to ſerve in Juries. Thoſe who come to Parliament by right of Peerage, ſit as Barons. Thoſe who come by Letters of Summons, are ſtyled* Chevaliers.

NOt long after, the King and the Barons meet at *Northampton*. They treat concerning the Laws and the adminiſtration of Juſtice: At length the Kingdom being divided into ſix Provinces or *Circuits*, there are choſen from among the Lawyers, ſome, who in every of thoſe Provinces might preſide in the Seat of Juſtice, Commiſſioned by the Name of *Itinerant Juſtices*, or *Juſtices in Eyre*. See here the Liſt and Names of thoſe Juſtices out of *Hoveden*.

Hugh de Creſſi.
Walter Fitz-Robert.
Robert Mantel.
} for *Norfolk.* *Suffolk.* *Cambridge.* *Huntington.* *Bedford.* *Buckingham.* *Eſſex.* *Hertford.*

Hugh de Gundeville.
William Fitz-Ralph.
William Baſſet.
} for *Lincoln.* *Nottingham.* *Darby.* *Stafford.* *Warwick.* *Northampton.* *Leiceſter.*

Robert Fitz-Bernard.
Richard Giffoꝛd.
*Roger Fitz-*Reinfrai.
} for *Kent.* *Surrey.* *Southampton.* *Suſſex.* *Barkſhire.* *Oxford.*

William Fitz-Steeven.
Bertam de Verdun.
Turſtan Fitz-Simon.
} for *Hereford.* *Gloceſter.* *Worceſter.* *Shropſhire.*

Ralph Fitz-Steeven.
William Ruffus.
Gilbert Pipard. } for { *Wiltſhire.* *Dorſetſhire.* *Somerſetſhire.* *Devonſhire.* *Cornwall.*

Robert de Wals.
Ralph de Glanville.
Robert Pikenot. } for { *York.* *Richmond.* *Lancaſhire.* *Copland.* *Weſtmoreland.* *Northumberland.* *Cumberland.*

'Theſe he made to take an Oath, that they would themſelves, *bona 'fide*, in good faith, and without any deceit or trick, ('tis the ſame Author whoſe words I make uſe of) 'keep the under-written *Aſſizes*, and 'cauſe them inviolably to be kept by the men of the Kingdom. He mentions them under this ſpecious Title.

The ASSISES *of King* HENRY, *made at* Clarendon, *and renewed at* Northampton.

66. 'If any one be called to do right (or be ſerved with a Writ) before 'the Juſtices of our Lord the King, concerning Murder, or Theft, or 'Robbery, or the receiving and harbouring of thoſe who do any ſuch 'thing; or concerning Forgery, or wicked ſetting fire of houſes, *&c.* 'let him upon the Oath of twelve Knights of the Hundred; or if there be 'no Knights there, then upon the Oath of twelve free and lawful men, 'and upon the Oath of four men out of each Village of the Hundred, 'let him go to the Ordeal of Water, and if he periſh, *i. e.* ſink, let him 'loſe one foot. The *Knights* who are wanting here, are perhaps thoſe who hold by Knights ſervice, or if you had rather, that hold by Fee; betwixt whom, and thoſe who ſerved in War for wages or pay, which in the Books of Fees are called *Solidatæ* (the ſame peradventure as by *Cæſar* are termed *Soldurii*, that is, *Soldiers*; by *Nicolaus Damaſcenus*, Σιλοφόροι, by our Monks, *Bracton*, *Otho Friſingenſis*, and *Radevicus*, in the Camp Laws of *Barbaroſſa*, are ſtyled *Servientes*, that is, *Serjeants*) there is an apparent difference; both of them being placed far below the dignity of thoſe honorary Knights, who are called *Equites aurati*.

Cæſ. comm. l. 3. Ath. dipn. l. 6. Feud. l. 2. tit. 20. Otho Friſ. lib. de Frederic. 1. Radevic. l. 1. c. 26.

But yet I do very well know, that theſe *honorary Knights* alſo were of old time, and are now by a moſt certain right cal'ed forth to ſome Tryals by Jury. To the *Kings Great* or *Grand Aſſiſe* (I ſay) and to a Suit of Law conteſted, when a Baron of Parliament is Party on one ſide, *i. e.* Plaintiff or Defendant. To the *Aſſiſe*, in that it is the moſt ſolemn and honourable way of Tryal, and that which puts an utter end to the claim of the Party that is caſt. To ſuch an *unequal ſuit*, that there may be ſome equality of Name or Title as to ſome one, at leaſt, of the Judges (for the *Jury* or twelve men are upon ſuch occaſion Judges made) and

Brack. l. 5. de Eſſoniis, c. 10. & 26 Ed. 3. fo. 57. a. 30 Ed. 3. fol. 26. v. 17 Ed. 2. tit. Attaint. 60. 1. Ed. 3. tit. Challenge. 115. Plo. com. fol. 117. 8 H. 6. fol. 10.

and as to the more honourable of the two parties, whether Plaintiff or Defendant. For the *Peers* of Parliament, who are the greater Nobles (amongſt whom by reaſon of their Baronies, *Arch-Biſhops* and *Biſhops*, heretofore a great many *Abbots)* ſuch as are *Dukes*, *Marqueſſes*, *Earls*, *Viſcounts*, and *Barons*; who though they be diſtinguiſhed by Order and honorary Titles, yet nevertheleſs they ſit in Parliament, only as they are *Barons* of the Realm. And thoſe who at the Kings pleaſure are called in by Letters of ſummons, as Lawyers term it, are ſtyled Cheval'ers, not *Barons*. For that of *Chevalier* was a Title of Dignity; this of *Baron* anciently rather of Wealth, and great Eſtate. Which Title only ſuch Writs of Summons beſtowed till *Richard* the ſeconds time, who was the firſt that by Patent made *John Beauchamp* of *Holt*, Baron of *Kiderminſter*: Now both ways are in faſhion.

CHAP. XVI.

The perſon convict by Ordeal, *to quit the Realm within Forty dayes. Why Forty dayes allowed. An account of the Ordeals by Fire and Water.* Lady Emme *clear'd by going over burning Coulters. Two ſorts of tryal by Water. Learned conjectures at the riſe and reaſon of theſe cuſtoms. Theſe Ordeals, as alſo that of ſingle Combat condemned by the Church.*

67. 'AT *Northampton* it was added for the rigour of Juſtice, (remember what was ſaid in the foregoing Chapter) 'that he 'ſhould in like manner loſe his right Hand or Fiſt with his Foot, and for-'ſwear the Realm, and within Forty Dayes go out of the Kingdom into 'baniſhment. (He had the favour of Forty Dayes allowed him, ſo ſaith *Bracton*, that in the mean time he might get help of his friends to make proviſion for his Paſſage and Exile.) 'And if upon the tryal by water he 'be clean, *i. e.* innocent, let him find pledges, and remain in the Realm, 'unleſs he be arighted for Murder, or any baſe Felony, by the Commu-'nity or Body of the County, and of the Legal Knights of the Countrey, 'concerning which, if he be arighted in manner aforeſaid, although he 'be clean by the tryal of Water; nevertheleſs let him quit the Realm 'within Forty Dayes, and carry away his Chattels along with him, ſa-'ving the right of his Lords, and let him forſwear the Realm at the mer-'cy of our Lord the King.

Bract. tract. de Coron. l. 3.

Here let me ſay a little concerning the Tryal by Fire and Water, or the Ordeals. It is granted, that theſe were the *Saxons* wayes of tryal, raſhly and unadviſedly grounded upon Divine Miracle. They do more appertain to Sacred Rites, than to Civil Cuſtoms; for which reaſon we paſt them by in the former Book, and this place ſeemed not unſeaſonable to put the Reader in mind of them. 'He who is accuſed, is bound to 'clear himſelf ('tis *Ralph Glanvill* writes this) by the Judgement of 'God, to wit, by hot burning Iron, or by Water, according to the dif-'ferent condition of men: by burning hot Iron, if it be a free-man; by 'Water, if he be a Countrey-man or Villain. The party accuſed did carry in his hand a piece of Iron glowing hot, going for the moſt part two or three ſteps or paces along, or elſe with the ſoles of his feet did walk upon red hot Plough-ſhares or Coulters, and thoſe, according to the Laws of the *Franks* and *Lombards*, nine in number. The Lady *Emme* the *Confeſſor*'s Mother being impeached of Adultery with *Aldwin* Biſhop of *Winton*, was wonderfully cleared by treading upon ſo many, and is famous for it in our Hiſtories, being preſerved ſafe from burning, and proved innocent from the Crime.

Glanv. l. 14. c. 1.

Polydor. hiſt. l. 8. Matth. Park. in vit. Rob. Archiep. Cant.

There were two ſorts of watery *Ordeal* or tryal by Water; to wit, cold or ſcalding hot. The party was thrown into the cold water, as in ſome places at this day Witches are uſed: he who did not by little and little ſink to the bottom, was condemned as guilty of the Crime, as one whom that Element, which is the outward ſign in the Sacrament of Regeneration, did not admit into its boſome. As to ſcalding Water, ones arm

in

in that manner thruſt in up to the elbow, made a diſcovery of the truth; and *Ælſtan* a Monk of *Abendon*, afterward Biſhop of *Shirburn*, thruſting in his bare Hand into a boiling Cauldron, ſhewed himſelf with ſome pride to his Abbot.

But that they ſay, that Ruſticks or Vaſſals only were tryed by Water, (for *Water* is aſcribed to the earthly and ignoble nature, *Fire* to the heavenly; ſo that from the uſe of Fire peculiar to man, *Firmianus Lactantius* hath fetcht an argument for the Immortality of the Soul) that this is not altogether ſo true, is made out by that one example of *John*, a Noble and Rich old man, who in the time of King *Henry* the Second, when, being charged with the death of his Brother the Earl of *Ferrers*, he could not acquit himſelf by the Watery Tryal, was hang'd on a Gallows. Malmesb. l. 2. de geſt. Pontif. Lact. Inſtit. l. 7. de divin. præm. c. 9. Hoveden. annal. l. 2.

Whence or by what means both theſe Cuſtoms were brought in among Chriſtians, 'tis none of my buſineſs to make an over ſtrait inquiry. I remember that *Fire* among the Ancients was accounted purgative; and there is one in a Tragedy of *Sophocles* intitled *Antigone*, who of his own accord profeſt to King *Creon*, Cœl. Rhod. antiq. ſect. l. 17. c. 21.

——— χ' μύδρους αἴρειν χεροῖν
Καὶ πῦρ διέρπειν. ——— Sophocles in Antigone.

That in his hands he red-hot gads would keep,
And ober burning gleads would bare-foot creep.

to ſhew himſelf innocent as to the Burial of *Polynices*. I paſs by in ſilence that *Pythagorical* opinion, which placeth Fire in the Centre of the Univerſe, where *Jupiter* hath his Priſon; which Fire ſome, however the *Peripateticks* ſtiffly oppoſe it, would have to be in plain terms the *Sun*, Ariſt. 2. de Cœlo.

——— ὃς πάντ' ἐφορᾷ, χ' πάντ' ἐπακούει. Iliad. 3.

Who all things oberlooks, and all things hears.

Yet I ſhall not omit this, that in the holy Bible the great and gracious God hath of a truth diſcovered himſelf to mortal conception in the very name of *Fire*, ūs, as a thing agreeable to Divinity, as ſaith *John Reuchlin*; and that S. *Paul* hath, according to the *Pſalmiſts* mind, ſtiled the Miniſters of God, *a flame of fire*. And indeed to abuſe the holy Scriptures, by miſ-interpreting them, is a cuſtom too ancient and too too common. Deut. 4. Zanch. de nat. Dei, l. 1. c. 6. Reuchl. de verb. mirif. l. 2. c. 16. Pſalm 104. Hebr. 1. 7.

Homer and *Virgil* both ſing of

——— *Imperjuratam Stygiamque paludem,*
Dii cujus jurare timent & fallere numen. Æneid. 6.

that is,

——— **Th' unperjur'd Stygian lake,**
Whoſe name the Gods do fear in vain to take.

We read of the Infants of the *Celts*,

Anthol. 9. Epigr. 47.

Κεκειμένους λουτροῖσιν ἐλεγχιγάμου ποταμοῖο.

Try'd in the ſtreams of ſacred Flood,
Whether of right or of baſe blood;

Polyhiſt. l. 1. c. 10. Ovid. Faſt. 2. Senec. Ep. 41.

as it is in the *Greek Epigrams*: of the fountains of *Sardinia*, in *Solinus*: of the moiſt *Februa*, or purifications by water, in *Ovids Faſtorum*: and of thoſe Rivers that fell from Heaven, and their moſt wonderful and hidden natures, among Natural Philoſophers. But moſt of theſe things were not known peradventure in our *Ordeals*. Yet *Martin Del Rio*, a man of various Reading and exquiſite Learning, hath in his *Magical Inquiries* offered a conjecture, that the tryal by Water crept into uſe from a paltry imitation of the *Jews* Cup of Jealouſie.

Mart. del Rio diſq. mag. l. 4. ſect. 3. & 4.

Truth is, a great many inſtances both of this way of trying by Water and of that by Fire, are afforded by the Hiſtories of the *Danes*, *Saxons*, *Germans*, *Franks*, *Spaniards*, in a word, of the whole Chriſtian World.

Ovid. Faſt. 4.

An quia cunctarum concordia ſemina rerum,
Sunt duo diſcordes Ignis & Unda dei,
Junxerunt elementa Patres?

was it, ſaith the Poet,

'Cauſe the two diff'ring Gods,
Alwayes at ods,
That of Water, that of Fire,
Which yet in harmony conſpire
The ſeeds of all things fitly joyn'd;
Therefore our Fathers have theſe two combin'd.

Pic. Mirandula in Heptaplo.

Or was it, becauſe that the Etymologie of the Word שמים *Haſhamaim*, that is, *Heaven*, (for the Heavens themſelves were the feigned Gods of the Gentiles) ſome are pleaſed with the deriving it from אש *Eſh*, *i. e. Fire* and מים *Maim*, *i. e. Water*: Let ſome more knowing *Janus* tell you.

Pindar. Olymp. 3.

——— ὁ μὲν διώκω· χειρὸς ἥνυ.

For my part I ſhall not this game purſue;
Why ſhould I loſe my time and labour too?

The ſuperſtitions and fopperies, the rites and uſages, the luſtrations and purifyings, the Prayers and Litanies, and the ſolemn preparations (in conſecrating and conjuring the Water, *&c.*) you have in *Will. Lambard* in his *Explications of Law terms*, and in *Matthew Parker* Arch-Biſhop of *Canterbury* in his *Antiquities of the Britiſh Church*. Both of them together, with that other of ſingle *Combat* or Duel (for that alſo was reckoned among the *Ordeals*) were judged by the Church of *Rome* to be impious cuſtoms; and it is long ſince that they have been laid aſide, and not put in practice among the common ordinary wayes of peoples purging and clearing themſelves.

Vitâ Roberti.

Decret. tit. de vulgar. purgat. cauſ. 2. quæſt. 5.

Well,

Well, now let me come back to my own Country again, and return to *Northampton*.

CHAP. XVII.

Other Laws: Of entertaining of ſtrangers. An **Uncuth**, *a* **Guſt**, *a* **Hogenhine**; *what of him who confeſſeth the Murder, &c. Of* **Frank pledge.** *Of an Heir under age. Of a Widows Dowry. Of taking the Kings fealty. Of ſetting a time to do homage. Of the Juſtices duty. Of their demoliſhing of Caſtles. Of Felons to be put into the Sheriffs hands. Of thoſe who have departed the Realm.*

68. 'LEt it be lawful for no man, neither in Borough nor in Village or place of entertainment, to have or keep in his houſe, 'beyond one night, any ſtranger, whom he will not hold to right, (that is, anſwer for his good behaviour) 'unleſs the perſon entertain'd ſhall 'have a reaſonable Eſſoin or excuſe, which the Maſter or Hoſt of the 'houſe is to ſhew to his neighbours; and when the Gueſt departs, let 'him depart in preſence of the neighbours, and in the day time. Hither belongs that of *Bracton*. 'He may be ſaid to be of ones family, who ſhall 'have lodged with another for the ſpace of three nights; in that the firſt 'night he may be called **Uncuth**, *i.e.* Unknown, a Stranger; but the ſe'cond night **Guſt**, *i.e.* a Gueſt or Lodger; the third night **Hogenhine** (I 'read Hawan man) *i.e.* in Greek ὁμογενὴς, οἰκεῖος, in Latin *Familiaris*, one of the family.

Bract. l. 3. tract. 2. c. 10. & Canuti leges.

69. 'If any one ſhall be ſeiſed for Murder, or for Theft, or Robbery, 'or Forgery, and be knowing thereof, (*i.e.* ſhall confeſs it) or for 'any other Felony which he ſhall have done, before the Provoſt (the 'Maſter or Bailiff of the Hundred or Borough, and before lawful men, 'he cannot deny it afterwards before the Juſtices. And if the ſame per'ſon without Seiſin (*with Seiſin* in this place is the ſame as ἐπαυτοφώρῳ, as we commonly ſay in our Language, **taken with the manner**) ſhall re'cognize or acknowledge any thing of this nature before them, this 'alſo in like manner he ſhall not be able to deny before the Juſtices.

70. 'If any one ſhall dye holding in Frank Pledge (*i.e.* having a 'free Tenure) let his heirs remain in ſuch Seiſin, as their Father had on 'the day he was alive and dyed, of his fee, and let them have his Chat'tels, out of which they may make alſo the deviſe or partition of the de'ceaſed, (that is, the ſharing of his goods according to his will) and 'afterwards may require of their Lord, and do for their relief and other 'things, which they ought to do as touching their Fee (*i.e.* in order to 'their entring upon the eſtate.)

71. 'If

71. 'If the heir be under age, let the Lord of the Fee take his homage, and have him in cuſtody or keeping for as long time as he ought; 'let the other Lords, if there be more of them, take his homage, and 'let him do to them that which he ought to do.

72. 'Let the Wife of the deceaſed have her Dowry, and that part of 'his Chattels, which of right comes to her. In former times peradventure it was a like generally practiſed by the *Engliſh*, that the Wife and Children ſhould have each their lawful *Thirds* of the eſtate; (each of them, I ſay, if they were in being; but half to the Wife, if there were no iſſue; and as much to the Children, if the Wife did not ſurvive her Husband:) as it was practiſed by the *Romans* of old according to the *Falcidian* Law. and of later time by the *Novells* of *Juſtinian*, that they ſhould have their *Quarter*-part. For I ſee that thoſe of *Normandy*, of *Arras*, of *Ireland*, people that lay round about them, had the ſame cuſtom. Of this you are to ſee *Glanvill*, *Bracton*, the *Regiſter* of *Briefs* or *Writs*, and *William Lindwood*, beſide the Records or yearly Reports of our Law.

73. 'Let the Juſtices take the Fealties of our Lord the King before the 'cloſe of *Eaſter*, and at furtheſt before the cloſe of *Pentecoſt*; namely, of 'all Earls, Barons, Knights and Free-holders, and even of Ruſticks or 'Vaſſals, ſuch as have a mind to ſtay in the Realm; and he who will not 'do fealty, let him be taken into cuſtody as an enemy of our Lord the 'King.

74. 'The Juſtices have alſo this to give in charge, that all thoſe, who 'have not as yet done their homage and allegiance to our Lord the King, 'do at a term of time; which they ſhall name to them, come in and do 'homage and allegiance to the King as to their Liege Lord.

75. 'Let the Juſtices do all acts of Juſtice and rights belonging to our 'Lord the King by a Writ of our Lord the King, or of them who ſhall 'be in his place or ſtead, as to a half-Knights fee and under; (a *Knights fee* in an old Book, which pretends to more antiquity by far than it ought, concerning *the manner of holding Parliaments*, is ſaid to be *twenty pounds* worth of Land in yearly revenue, but the number prefixt before the *Red Book* of the *Exchequer* goes at the rate of Six Hundred and Eighty Acres:) 'unleſs the complaint be of that great concern, that it 'cannot be determined without our Lord the King, or of that nature that 'the Juſtices by reaſon of their own doubting refer it to him, or to thoſe 'who ſhall be in his place and ſtead. Nevertheleſs let them to the ut-'moſt of their ability intend and endeavour the ſervice and advantage 'of our Lord the King.

76. 'Let the Juſtices provide and take care, that the Caſtles already 'demoliſht, be utterly demoliſhed, and that thoſe that are to be demo-'liſhed, be well levelled to the ground. And if they ſhall not do this, 'our Lord the King may pleaſe to have the judgement of his 'Court againſt them, as againſt thoſe who ſhew contempt of his 'Precept.

77. 'A

77. 'A Thief or Robber, as ſoon as he is taken, let him be put into 'the Sheriffs hands to be kept in ſafe cuſtody; and if the Sheriff ſhall 'be out of the way, let him be carried or brought to the next Con- 'ſtable of a Caſtle, and let him have him in cuſtody, until he deliver 'him up to the Sheriff.

78. 'Let the Juſtices according to the cuſtom of the Land, cauſe in- 'quiry to be made of thoſe, who have departed or gone out of the 'Realm. And if they ſhall refuſe to return within a term of time that 'ſhall be named, and to ſtand to right in the Kings Court (*i. e.* to make their appearance, and there to anſwer, if any thing ſhall be brought in againſt them) 'let them after that be outlawed, and the names of the 'Outlaws be brought at *Eaſter* and at the Feaſt of St. *Michael* to the Ex- 'chequer, and from thence be ſent to our Lord the King.

Theſe Laws were agreed upon at *Northampton*.

CHAP. XVIII.

Some Laws in favour of the Clergy. Of forfeitures on the account of Foreſt or hunting. Of Knights fees. Who to bear Arms, and what Arms. Arms not to be alienated. No Jew *to bear Arms. Arms not to be carryed out of* England. *Rich men under ſuſpicion to clear themſelves by Oath. Who allowed to ſwear againſt a Free-man. Timber for building of Ships not to be carryed out of* England. *None but Free-men to bear Arms. Free-men who. Ruſticks or Villains not ſuch.*

Matth. Paris. 79. 'THat henceforth a Clergy-man be not dragg'd and drawn before a Secular Judge perſonally for any crime or tranſgreſſion, unleſs it be for Foreſt or a Lay-fee, out of which a Lay-ſervice is 'due to the King, or to ſome other Secular Lord. This priviledge of the Clergy the King granted to *Hugh* the Popes Cardinal Legate, by the Title of S. *Michael à Petra*, who arrived here on purpoſe to advance the Popiſh intereſt.

80. 'Furthermore, that Arch-Biſhopricks, Biſhopricks or Abbacies be 'not held in the Kings hand above a year, unleſs there be an evident 'cauſe, or an urgent neceſſity for it.

81. 'That the Murderers or Slayers of Clergy-men being convicted, 'or having confeſt before a Juſtice or Judge of the Realm, be puniſhed 'in the preſence of the Biſhop.

V. Britton. cap. d' Appeales, and temp. Ed. 1. tit. Quod permittat. 9. 82. That Clergy-men be not obliged to make Duel: *i. e.* not to clear themſelves, as others upon ſome occaſion did, by ſingle combat.

83. 'He ordained at Woodſtock (we tranſcribe theſe words out of *Hoveden*) 'that whoſoever ſhould make a forfeit to him concerning 'his Foreſt, or his hunting once, he ſhould be tyed to find ſafe Pledges 'or Sureties; and if he ſhould make a ſecond forfeit, in like manner 'ſafe Pledges ſhould be taken of him; but if the ſame perſon ſhould 'forfeit the third time, then for his third forfeit, no pledges ſhould be 'taken, but the proper body of him who made the forfeit.

Moreover, we meet with theſe Military Laws, or Laws of *Knights fees*, made for Tenants and other people of the common ſort.

84. 'He who hath one Knights fee ('tis the aforeſaid *Hoveden* ſpeaks) 'let him have an Habergeon or Coat of Male, and a Helmet or 'Head-piece and a Buckler or Target and a Lance: and let every Knight 'have ſo many Habergeons, and Helmets, and Targets, and Lances, as 'he ſhall have Knights fees in his demeans.

85. 'Whatſoever Free-holder that is a Lay-man, ſhall have in Chattel

'or

'or in Rent and Revenue to the value of Sixteen Marks, let him have a 'Coat of Male, and a Head-piece, and a Buckler, and a Lance.

86. 'Whatſoever Lay-perſon being a Free-man, ſhall have in Chattel 'to the value of Ten Marks, let him have a little Habergeon, or Coat 'of Male, and a **Capelet** of Iron, and a Lance.

87. 'Let all Burghers or Townſ-men of a Corporation, and the 'whole Communities of Free-men have a **Mambais**, and a **Capelet** of 'Iron, and a Lance.

88. 'Let no one, after he hath once had theſe Arms, ſell them, nor 'pawn them, nor lend them, nor by any other way alienate them from 'himſelf, or part with them: nor let his Lord alienate them by any 'manner of way from his man (*i. e.* his Tenant that holds under him) 'neither by forfeit, nor by gift, nor by pledge, nor by any other way.

89. 'If any one ſhall dye having theſe Arms, let them remain to 'his heir; and if the heir be not of ſuch eſtate or age, that he may uſe 'the Arms, if there ſhall be need, let that perſon who ſhall have 'them (the heir) in cuſtody, have likewiſe the keeping of the Arms, 'and let him find a man, who may uſe the Arms in the ſervice of our 'Lord the King, if there ſhall be need, until the heir ſhall be of ſuch 'eſtate, that he may bear Arms, and then let him have them.

90. 'Whatſoever Burgher ſhall have more Arms, than it ſhall be-'hove him to have, according to this Aſſize, let him ſell them, or give 'them away, or ſo diſpoſe of them from himſelf to ſome other man, 'who may retain them in *England* in the ſervice of our Lord the 'King.

91. 'Let no one of them keep by him more Arms, than it ſhall be-'hove him according to this Aſſize to have.

92. 'Let no *Jew* keep in his poſſeſſion a Coat of Male or an Haber-'geon, but let him ſell them, or give them, or in ſome other manner 'put them away, in that wiſe that they may remain in the ſervice of 'the King of *England*.

93. 'Let no man bear or carry Arms out of *England*, unleſs it be 'by ſpecial order of our Lord the King; nor let any one ſell Arms to 'any one, who may carry them from *England*; nor let Merchant or 'other carry or convey them from *England*.

94. 'They who are ſuſpected by reaſon of their wealth or great 'eſtate, do free or acquit themſelves by giving their Oaths. The *Juſtices* have Power or Juriſdiction given them in the caſe for this pur-poſe. 'If there ſhall be any, who ſhall not comply with them (the Juſtices) 'the King ſhall take himſelf to the members or limbs of ſuch 'perſons, and ſhall by no means take from them their Lands or 'Chattels.

95. 'Let no one ſwear upon lawful and free-men, (*i. e.* in any matter againſt or concerning them) who hath not to the value of Sixteen 'or Ten Marks in Chattel.

96. 'Let no one, as he loves himſelf and all that he hath, buy or ſell 'any Ship to be brought from *England*; nor let any one carry, or cauſe 'to be carryed out of *England* Timber for the building of Ships.

97. Let no one be received or admitted to the Oath of bearing Arms 'but a Free-man.

To bring once for all ſomething concerning a *Free-man*, that may not be beſide the purpoſe. The ancient Law of *England* beſtowed that name only upon ſuch perſons, as many as, either being honoured by the Nobility of their Anceſtors, or elſe out of the Commonalty being of ingenuous Birth (to wit, of the Yeomanry) did not hold that ruſtick fee or Tenure of Villenage) dedicated to *Stercutius* (the God of Dunghils) and neceſſarily charged and burthened with the Plough tail, the Wain, and the Dray, which are the hard Countrey-folks Arms and Implements. To this purpoſe makes the term of *Ruſtick* or *Countrey-man* above mentioned in the Statutes of *Clarendon*, and the place of *Glanvill* cited in the Tryal of *Ordeal*.

Temp. Ed. 1. tit. Attorney, 103.

That the buſineſs may be more clearly aſſerted; a Suit of Law being waged in the time of *Edward* the Firſt, betwixt *John Levin* Plaintiff and the Prior of *Bernwell* Defendant (I have taken the Story out of an old Manuſcript, and the Reports of our Law, and the Collection or Body of the Royal Reſcripts do agree to it) it was then, after ſeveral diſputes bandied to and fro, and with earneſtneſs enough, decided by the judgement of the Court, that thoſe Tenants which hold in fee *from the ancient Domain of the Crown*, as they call it, are by no means comprehended under the title of *free-men*; as thoſe who driving their labour around throughout the year pay their daily Vows to *Ceres* the Goddeſs of Corn, to *Pales* the Goddeſs of Shepherds, and to *Triptolemus* the Inventer of Husbandry or Tillage, and keep a quarter with their *Gee Hoes* about their Chattel.

And now death hath put an end to King *Henry*'s Reign. And I alſo having made an end of his Laws, ſo far as Hiſtories do help me out, do at the laſt muſter and arm my Bands for the guard of my Frontiers. I wiſh they may be of force enough againſt Back-biters.

CHAP.

CHAP. XIX.

Of Law-makers. Our Kings not Monarchs at first. Several of them in the same County. The Druids *meeting-place where. Under the* Saxons, *Laws made in a general Assembly of the States. Several instances. This Assembly under the* Normans *called* Parliament. *The thing taken from a custome of the ancient* Germans. *Who had right to sit in Parliament. The harmony of the Three Estates.*

BUt however *Laws* are not without their *Makers* and their *Guardians*, or they are to no purpose. It remaineth therefore that we say somewhat in general of them. They are *made* either by Use and *Custom* (for things that are approved by long Use, do obtain the force of Law) or by the Sanction and *Authority* of Law-givers. Of ancient time the *Semnothei*, the *Kings* and the *Druids* were *Law-givers*; amongst the *Britans* I mean.

Concerning the *Semnothei* whatsoever doth occurr you had before.

The *Kings* were neither Monarchs of the whole Island, nor so much as of that part of *Brittany* that belonged to the *Angles*. For there were at the same time over the single County of *Kent* four Kings; to wit, *Cyngetorix*, *Carvilius*, *Taximagulus*, and *Segonax*; and at the same rate in other Counties. Wherefore we have no reason to make any question, but that part wherein we live, now called *England*, was governed by several persons, and was subject to an Aristocracy: according to what *Polydore Virgil*, *John Twine*, *David Powell* and others have informed us.

Polyd. hist. Angl. 2. Tuin. Com. de reb. Albion. Dav. Pouel. in Epist. Guli. Fleetwode.

The *Druids* were wont to meet, to explain the Laws in being, and to make new ones as occasion required, as is most likely, in some certain place designed for that purpose; as now at this very time all matters of Law go to be decided at *Spire* in *Germany*, at *Westminster*-Hall in *England*, and *Paris* in *France*.

Their publick Convention or Meeting-place was constantly, as *Julius Cæsar* tells us, in the borders of the *Carnutes* the middle Region of all *France*. Some think that a Town at eight Miles distance from the *Metropolis* of those people commonly called *Dreux*, was designed for that use.

Cæs. l. 6. de bell. Gall.

Paul. Merula.

Whilst the *Saxons* governed, the Laws were made in the General Assembly of the States or Parliament. In the front of King *Ina*'s Laws ('tis above Eight Hundred and Eighty years that he first reigned) we read thus, **Ic Ine mid godes gift West-Sæxna Cyning mid geþeaht & mid lere Cenredes mines fader & hedde & Erconwald mine biscops & mid eallum minum, ealdor mannum, & þam yldestan Witan mines þeode be beodeth, &c.** which in our present *English* speaks thus, *I* Ina *by the Grace of God King of the* West-Saxons, *by the advice and order of* Kenred *my Father, and of* Hedda *and* Erconwald *my Bishops, and of all my Aldermen, and of the Elders and Wise Men of my people, do command*, &c. There are a great many instances of this kind in other places. Moreover *Witlaf* and *Bertulph*, who were Kings of the *Mercians*

Ingulph.

ans near upon Eight hundred years ago, do in their inſtruments under 'their hands make mention of Synods and Councils of the Prelates and
Camden. 'Peers convened for the affairs of the Kingdom. And an ancient Book has this paſſage of *Abendon*, 'Here was the Royal Seat, hither when they 'were to treat of the principal and difficult points of State, and affairs of 'the Kingdom, the people were uſed to meet and flock together. To this may be added that which *Malmesbury* ſayes of King *Edward* in the year of our Lord 903. 'The King gathered a Synod or Aſſembly of the 'Senators of the *Engliſh* Nation, over which did preſide *Pleimund* Arch-'Biſhop of *Canterbury* interpreting expreſly the words of the Apoſtolical 'Embaſſy. Theſe Aſſemblies were termed by the *Saxons*, Wiꝺena ȝemoꝺ, *i. e.* Meetings of the Wiſe Men, and micil ꝓinoꝺ, *i. e.* the Great Aſſemblies. At length we borrowed of the *French* the name of
Polyd. hiſt. Angl. l. 11. *Parliaments*, which before the time of *Henry* the Firſt, *Polydore Virgil* ſayes, were very rarely held. An uſage, that not without good reaſon ſeems to have come from the ancient *Germans*. So *Tacitus* ſayes of them, 'Concerning ſmaller matters the Princes only, concerning things of 'greater concern, they do all the whole body of them conſult; yet in 'that manner, that thoſe things alſo, which it was in the peoples power
Mod. ten. Parl. 'to determine, were treated of by the Princes too. And I have one that hath left it in writing, 'that when there was neither Biſhop, nor Earl, 'nor Baron, yet then Kings held their Parliaments: and in King *Arthur*'s Patent to the Univerſity of *Cambridge* (for ye have my leave, if you can
Jo. Caius Antiq. Cantabrig. l. 1. find in your heart, to give credit to it, as *John Key* does) 'by the coun-'ſel and aſſent of all and ſingular the Prelats and Princes of this Realm, 'I decree.

V. 22 Ed. 3. fol. 18. There were preſent at *Parliaments*, about the beginning of the *Normans* times, as many as were inveſted with Thirteen Fees of Knights ſervice, and a third part of one Fee, called *Baron*'s, from their large Eſtates: for which reaſon perhaps *John Cochleius* of *Mentz*, in his Epiſtle Dedicatory to our moſt Renowned Sir *Thomas More*, prefixt before the Chronicle of *Aurelius Caſſiodorus*, calls him *Baron* of *England*. But *Henry* the Third, the number of them growing over big, ordered by Proclamation, that thoſe only ſhould come there, whom he ſhould think fit to ſummon by Writ.

Theſe Aſſemblies do now ſit in great State, which with a wonderful harmony of the Three Eſtates, the *King*, the *Lords* and the *Commons*, or Deputies of the People, are joyned together, to a moſt firm ſecurity of the publick, and are by a very Learned Man in alluſion to that made word in *Livy*, *Panætolium* from the *Ætolians*, moſt rightly called
Auguſt. de civ. Dei, l. 2. c. 21. *Pananglium*, that is, *all England*. 'As in Muſical Inſtruments and Pipes 'and in Singing it ſelf, and in Voices (ſayes *Scipio* in *Tully*'s Books of the Common-wealth) 'there is a kind of harmony to be kept out of diſtinct 'ſounds, which Learned and Skilful Ears cannot endure to hear changed 'and jarring; and that conſort or harmony, from the tuning and orde-'ring of Voices moſt unlike; yet is rendred agreeing and ſuitable: ſo 'of the higheſt and middlemoſt and lowermoſt States ſhuffled together, 'like different ſounds, by fair proportion doth a City agree by the con-'ſent of perſons moſt unlike; and that which by Muſicians in ſinging is 'called *Harmony*; that in a City is *Concord*, the ſtraighteſt and ſureſt 'bond of ſafety in every Common-wealth, and ſuch as can by no means 'be without Juſtice.

But let this ſuffice for *Law-makers*.

CHAP.

CHAP. XX.

The Guardians of the Laws, who. In the Saxons *time ſeven Chief. One of the Kings among the Heptarchs ſtyled* Monarch *of all* England. *The Office of Lord* High Conſtable. *Of Lord* Chancellor, *ancient. The Lord* Treaſurer. Alderman *of* England, *what. Why one called* **Healfkoning.** Aldermen *of Provinces and* Graves, *the ſame as* Counts *or* Earls *and* Viſcounts *or Sheriffs. Of the* County Court, *and the Court of Inqueſts, called* Tourn le Viſcount. *When this Court kept, and the original of it.*

I Do ſcarce meet before the *Saxons* times with any Guardians of the Laws different from theſe Law-makers. In their time they were variouſly divided, whoſe neither Name nor Office are as yet grown out of uſe. The number is made up, to give you only the heads, by theſe; to wit, the *King*, the Lord *High Conſtable*, the *Chancellor*, the *Treaſurer*, the *Alderman of England*, the *Aldermen of Provinces* and the *Graves*. Thoſe of later date and of meaner notice I paſs by, meaning to ſpeak but briefly of the reſt.

The *King* was alwayes one amongſt the *Heptarchs* or ſeven Rulers, who was accounted (I have *Beda* to vouch it) the *Monarch of all England*. 'Ella King of the *South-Saxons* (ſo ſayes *Ethelwerd*) was the 'firſt that was dignified with ſo high a Title and Empire, who was 'Owner of as large a Juriſdiction as *Ecbright*; the ſecond was *Ceulin* 'King of the *Weſt-Angles*; the third *Æthelbrith* King of the *Kentiſh*-'men; the fourth *Redwald* King of the *Eaſterlings*; the fifth *Edwin* King 'of *Northumberland*; the ſixth *Oſwald*; the ſeventh *Oſwi*, *Oſwald*'s Bro-'ther; after whom the eighth was *Ecbright*. His *Weſt-Saxon* Kingdom took in the reſt for the greateſt part. Ethelwerd. l. 3. c. 2.

The Office of Lord *High Conſtable*, which diſappeared in *Edward* Duke of *Buckingham*, who in *Henry* the Eighth's time loſt his Head for High-Treaſon, was not ſeen till the latter end of the *Saxons*. One *Alfgar Staller* is reported by *Richard* of *Ely* Monk, to have been Conſtable to *Edward* the *Confeſſor*, and Mr. *Camden* mentions a dwelling of his upon this account called **Platty** in the County of *Middleſex*. He of *Ely* ſets him out for *a Great and Mighty Man in the Kingdom*. And indeed formerly that Magiſtrate had great power, which was formidable even to Kings themſelves. Hiſt. Elienſ. Camd. in Northampt.

They who deny there were any *Chancellors* before the coming in of the *Normans*, are hugely miſtaken. Nor are they diſproved only out of the Grant of *Edward* the *Confeſſor* to the Abbot of *Weſtminſter*, which I am beholden to Mr. *Lambard* for, at the bottom of which theſe words are ſet down: *I* Syward *Publick Notary, inſtead of* Rembald *the Kings Majeſties* Chancellor, *have written and ſubſcribed this paper*; but alſo out of *Ingulph*, who makes mention of *Turketulus*, ſome while after that Abbot of *Crowland*, Chancellor of King *Edred*, 'by whoſe Decree and Counſel V. Kel. relat. 6 Hen. 8. fol. 171. Stat. 13 Rich. 2. c. 2. Matth. Paris, pag. 563. Brook tit. Prerogative. 31.

'were

'were to be handled & treated whatſoever buſineſſes they were, Tempo-
'ral or Spiritual, that did await the Judgement of the King; and being thus
Fr. Thin. in contin. Chr. Eliz. 'treated of by him, might irrefragably ſtand good. And *Francis Thinn*, that Learned Antiquary has reckoned up ſeveral, who have diſcharged this Office; as *Turketill* to King *Ethelbald*, *Swithin* Biſhop of *Wincheſter* to King *Egbert*, *Ulfin* to King *Athelſtan*, *Adulph* to King *Edgar*, *Alſy* Abbot and Prelate of *Ely* to King *Ethelred*. Concerning which Office and the Seals, which the *Chancellor* in old time had the keeping of, I had rather you would conſult with *Camden*'s Tribunals or Seats of Juſtice, and thoſe things which *John Budden* at *Wainſleet* Doctor of Laws has brought out of the *Archives* into his *Palingeneſia*, than ſeek them at my hands.

Matth. Cant. in Odonis ſeveri vitâ. As for *Treaſurers*, *Dunſtan* was ſo to King *Edred*, and *Hugolin* to the *Confeſſor*.

But that fifth title of *Alderman of England*, is an unuſual one. Yet, if I don't miſtake my ſelf, he was the Chief Preſident in Tryals at Law, and an Officer to keep all quiet at home; the ſame as now perhaps is commonly called the *Lord Chief Juſtice of England*. This remarkable name I do not meet with, neither in the Monkiſh *Chronologers*, which are to be had at the Shops, nor in the *Records* of our Laws. But a pri-
Camden. vate Hiſtory of the Abbey of *Ramſey* in *Huntingdon-ſhire* has given us notice of one *Ailwins* Tomb with this Inſcription,

HIC. REQUIESCIT. AILWINUS. INCLITI. REGIS. EADGARI. COGNATUS. TOTIUS. ANGLIÆ. ALDERMANNUS. ET. HUJUS. SACRI. COENOBII. MIRACULOSUS. FUNDATOR.

that is, *Here reſteth* Allwin *Kinſman of the Renowned King* Edgar, *Alderman of all* England, *and the miraculous Founder of this Sacred Monaſtery*. And by reaſon of his great Authority and Favour which he had with the King, by a Nick name they called him **healfkoning**, i. e. *Half-King*.
Huntingd. hiſt. l. 6. Now *Henry* of *Huntingdon* ſayes, that *Toſtius* Earl (or to uſe his phraſe Conſul) of *Northumberland*, and *Harald* Sons of *Godwin* Earl of *Kent* were *Juſtices of the Realm*.

Aldermen may aptly be termed by the word *Senators*. Thoſe Judges did exerciſe a delegated power throughout the Provinces, called *Counties* or *Shires*, and the *Graves* an under-delegated power from them. The word is as much as Governours, and is the ſame thing, as in High Dutch **Grave** in **Landgrave**, **Burgrave**, **Palsgrave**, &c. and what amongſt ſome of our own people **Reev**. We ſhall call them both, as that Age did, in a *Latin* term, the one *Comites*, *i. e.* Counts or Earls, the other *Vicecomites*, that is, Viſcounts or Sheriffs.

The name of *Count* is every where met with amongſt the moſt ancient of the Monks, which yet does very often paſs into that of *Duke* in the ſubſcription of Witneſſes. And in the Charter of the Foundation of
Camden. *Chertſey* Abby in *Surrey*, *Frithwald* ſtiles himſelf *ſubregulus*, *i.e.* an under Kingling or petty Vice-Roy to *Wulpher* King of the *Mercians*; make no queſtion of it, he meant he was a *Count*.

A *Viſcount* and a Vice-Lord are more than very like, they are the very ſame. *Ingulph* ſayes it above. 'And in the laſt hand-writing of King
'*Edred* we have, I *Bingulph* Vice-Lord adviſed it, I *Alfer* Viſcount
'heard it.

Theſe

These *Counts* and *Viscounts*, or *Earls* and *Sheriffs* had in their Counties their several *Courts* both for private and for publick matters. For private affairs they had every Month a Meeting called the **County Court.** 'Let every *Grave*, as we have it in *Edward* the Elder's Laws, every 'fourth Week convene and meet the people in Assembly; let him do 'equal right to every one, and determine and put an end to all Suits 'and Quarrels, when the appointed days shall come. For publick business King *Edgar* ordered the *Court of Inquests* or Inquiries, called **Court le Viscount.** 'Let a Convention or Meeting be held twice every year 'out of every County, at which let the Bishop of that Diocess, and the 'Senator, (*i. e.* the Alderman) be present; the one to teach the people 'the Laws of God; the other the Laws of the Land. What I have set down in *William* the First at the end of the fourth Chapter of this second Book, you ought to consider of here again in this place.

Leg. Edw. 5. & Canut. 17.

Leg. Edgar. cap. 11.

The inhabitants did not meet at this *Court of Inquests* at any season promiscuously and indifferently, but as it is very well known by the use and ancient Constitutions of the Realm, within a Month either after *Easter*, or after *Michaelmas*. In which Court, seeing that not only the *Count*, as now a dayes the *Viscount* or *Sheriff* does, but also the *Bishop* did preside; it does not at all seem difficult to trace the very original of this temporary Law. That peradventure was the Synod of *Antioch* held in Pope *Julius* the First's time, and acknowledged in the sixth General Council held at *Constantinople*. In this latter there are expressly and plainly two Councils or Meetings of the Bishops to be kept every year within three Weeks after *Easter*, and about the middle of *October*, (if there be any small difference in the time, it can be no great matter of mistake). You may help your self to more other things of meaner note out of what has been said before about *Hundreds*, *Bourghs* and the like.

Synod. Antioch. c. 20.

Dist. 18. c. 4.

And this may serve in brief for the *Saxons*, who were entrusted with the care of their Laws.

CHAP. XXI.

Of the Norman *Earls. Their Fee. Their power of making Laws. Of the* Barons, i.e. *Lords of Manours. Of the* **Court Baron.** *Its riſe. An inſtance of it out of* Hoveden. *Other Offices much alike with the* Saxons.

I Shall be briefer concerning the *Normans*, I mean their *Earls* and *Barons*.

Their *Counts* or *Earls* before the Conqueſt, except thoſe of *Leiceſter*, and perchance ſome others, were but Officers, and not as yet hereditary. When *William* bore the ſway, they began to have a certain Fee and a deſcent of Patrimony; having together with their Title aſſigned to them a third part of the Revenues or Rents, which did ariſe out of the whole County to the Exchequer. This cuſtom is clear enough in *Gervaſe* of *Tilbury* in the caſe of *Richard de Redueriis* made Earl of *Devonſhire* by *Henry* the Firſt, & *Jeoffrey de Magna Villa* made Earl of *Eſſex* by *Mawd* the Empreſs. It ſeems that the *Saxon* Earls had the ſelf-ſame right of ſharing with the King. So in *Doomſday* Book we find it; 'The Queen *Edeua* had 'two parts from *Ipſwich* in *Suffolk*, and the Earl or Count Guert the third: 'and ſo of *Norwich*, that it paid Twenty Pound to the King, and to the 'Earl Ten Pound: ſo of the Revenues of the Borough of *Lewes* in '*Suſſex*, the King had two ſhares, and the Earl the third. And *Oxford* 'paid for Toll and Gable, and other cuſtomary Duties Twenty Pound 'a year to the King, beſides Six Quarts of Honey, and to Earl *Algar* 'Ten Pound.

To conclude, it appears alſo that theſe *Norman* Earls or Counts had ſome power of making Laws to the people of their Counties. For inſtance, the Monk of *Malmesbury* tells us, 'that the Laws of *William Fitz-* 'Osborn Earl of *Hereford* remained ſtill in force in the ſaid County, that 'no Souldier for whatſoever offence ſhould pay above Seven Shillings. The Writings and Patents of the men of *Cornwall* concerning their Stannaries or Tinn-Mines do prove as much; nor need I tell the ſtory, how *Godiva* Lady to the Earl *Leofrick* rid on Horſe-back through the Streets of *Coventry* with her hair diſhevelled, all hanging about her at full length, that by this means ſhe might diſcharge them of thoſe Taxes and Payments, which the Earl had impoſed upon them.

Malmesb. de geſt. reg. l. 3.

Out of the Countreys (wherein all Eſtates were ſubject to Military Service) the *Barons* had their Territories, as we call them Mannors; and in them their Courts to call their Tenants together, at the end of every three Weeks, and to hear and determine their Cauſes. A Civilian, one *Udalricus Zazius*, would have the original of theſe Courts among other Nations, to have come by way of imitation from *Romulus* his making of Lords or Patrons, and their Clanns or Tenants. The uſe of them at this day is common and ordinarily known. But to ſhew how it was of old, we will borrow out of *Hoveden* this ſpark of light. 'John *Marſhall* complained to *Henry* the Second, that whereas 'he had claimed or challenged in the Arch-Biſhops Court a piece of Land

Ad leg. 2. de origin. jur.

Roger de Hoveden in H. 2.

'to

'to be held from him by right of inheritance, and had a long time 'pleaded upon it, he could obtain no Juſtice in the caſe, and that he had 'by Oath falſified the Arch-Biſhops Court, (that is, proved it to be falſe 'by Oath, according to the cuſtom of the Realm: to whom the Arch-'Biſhop made anſwer, There has been no Juſtice wanting to *John* in my 'Court; but he, I know not by whoſe advice, or whether of his own 'head, brought in my Court a certain **Toper**, and ſwore upon it, that 'he went away from my Court for default of Juſtice; and it ſeemed to 'the Juſtices of my Court, that he did me the injury, by withdrawing 'in that manner from my Court; ſeeing it is ordained in your Realm, that 'he who would falſifie anothers Court muſt ſwear upon the holy Goſpels. 'The King not regarding theſe words, ſwore, that he would have Ju-'ſtice and Judgement of him; and the Barons of the Kings Court did 'judge him to be in the Kings Mercy; and moreover they fined him 'Five Hundred Pound.

As to doing Juſtice in all other Caſes, and managing of Publick Affairs, the *Normans* had almoſt the ſame Names and Titles of Officers and Offices as the *Saxons* had.

FINIS.

A Brief

CHRONOLOGY

TO

Attend and Aſsiſt

THE

HISTORY.

In the Year of the WORLD.	
1910.	*Samothes*, if there ever were ſuch a man, bears rule.
2805.	*Brutus* makes a deſcent, (that is, lands with his *Trojans*) in *Cornwall* or *Devonſhire*.
3516.	*Dunvallo Molmutius* ſwayes the Scepter.
3627.	*Martia*, Dowager of King *Quintilen*, is Queen Regent during the Minority of her Son *Siſillius* the Firſt.

Caius

3942. *Caius Julius Cæsar* arrives at *Deal* on the Sea-Coast of *Kent*, and

Lucan. *Territa quæsitis ostendit terga Britannis,*

that is,

having inquiry made,
after the Britans bold,
he turn'd his back, 'tis said,
his courage would not hold:

and was the firſt that diſcover'd *Britanny* to the *Romans*.

In the Year of CHRIST.

44. *Claudius Cæsar* Emperour ſends over *Aulus Plautius* with an Army as his Lieutenant General, and by degrees reduceth the Countrey into the form of a *Roman* Province.

52. A Colony of Veterans or old *Roman* Souldiers is ſent down to *Maldon* in *Eſſex*.

86. *Britanny* is ſubdued or brought under the yoke by the Conduct of *Junius Agricola*, in the time of *Domitian* the Emperour.

183. *Lucius* or King Lucy was the firſt Chriſtian King. Foraſmuch as he was of the ſame ſtanding with Pope *Eleutherius* and the Emperour *Commodus*. Whence it appears, that *Beda* makes others miſtake, and is himſelf miſtaken in his wrong account of time in this affair.

428. The *Saxons*, *Angles*, *Jutes*, *Danes*, *Friſons*, or *Friſelanders* arrive here from *Germany*, *Taurus* and *Felix* then Conſuls, in the one and twentieth year of *Theodoſius* the younger. The common or ordinary account of Writers ſets it down the four hundred forty ninth year: but that great man both for Authority and Judgement *William Camden Clarenceaux* King at Arms hath, upon the credit of ancient Records, cloſed this *Epoch* or Date of time within that term of years, which I have ſet in the Margin.

561. King *Ethelbert* the Firſt King of the *Engliſh Saxons*, who profeſt Chriſtianity.

800. King *Egbert*.

King

872.	King *Alured* or *Alfred.*
959.	King *Edgar.*
1017.	*Canute* or King **Knute** the *Dane.*
1036.	*Harold*, eldeſt Son to King *Knute*, called for his ſwiftneſs *Harefoot.*
1042.	*Edward* the *Confeſſor*, after whom *Harold* Son to *Godwin* Earl of *Kent* uſurp't the Throne, where he continued only nine Months.
1066.	*William* Duke of *Normandy*, after a Battel fought upon the Plain near *Haſtings*, got the Dominion or Soveraignty of the *Britiſh* Iſland.
1088.	*William Rufus*, ſecond Son of the Conquerour.
1100.	*Henry* the Firſt, younger Brothor to *Rufus.*
1135.	King *Stephen*, Count of *Blois* in *France*, Nephew to *Henry* by his Siſter *Adela.*
1153.	*Henry* the Second, Grand-child to *Henry* the Firſt by his Daughter *Mawd* the Empreſs, and *Jeoffrey* Count of *Angers* in *France.*

FINIS.

BRIEF NOTES UPON Some of the more Difficult Paſſages IN THE TITLE-PAGE.

Common and Statute Law] So I render *Jus Prophanum*, as *Prophane* is oppoſed to *Sacred* and *Eccleſiaſtical*, as himſelf explains the term in his Preface out of *Feſtus*. Otherwiſe it might have been render'd *Civil Law*, as relating to Civil affairs and the Government of *State*, not medling with the Canons and Rules of the *Church*; but that the *Civil Law* with us is taken generally in another ſenſe for the *Imperial Law*, which however practiſed in ſeveral other Nations, hath little to do in *England*, unleſs in ſome particular caſes.

Of Engliſh Britanny] that is, that part of *Britain*, which was inhabited by the *Angles*, in *Latin* called *Anglo-Britannia*, by us ſtrictly *England*; as for diſtinction, the other part of the Iſland, *Wales*, whither the *welſh*, the true and ancient *Britans*, were driven by the *Saxons*, is called *Cambro-Britannia*, that is, *Welſh Britanny*; and *Scotland* poſſeſt by the *Scots*, is in like manner called *Scoto-Britannia*, that is *Scotch-Britanny*, which now together with *England*, ſince the Union of the two Kingdoms, goes under the name of *Great Britain*.

In the Author's PREFACE.

The Guardian of my Threshold] So *Limentinus* among the *Romans* was the God of the Threshold, *qui limentis*, i. e. *liminibus praeest*; but it may be taken for the Officer of the Gate, the Porter, who gives admission to strangers.

In a different Character] Accordingly in the *Latin* the Author's Citations are printed in *Italick*; which, because they are so frequent, I thought fit rather to notifie by a distinction, as usual, in the Margin; thus, " "

Intercidona, Pilumnus & Deverra] These were Heathen Deities, to whom they attributed the Care of their Children, whom else they thought *Silvanus* might, like *Oberon* King of the Fairies, surprize or do some other mischief to.

In the FIRST BOOK.

CHAP. I.

Pag. 2. lin. 23. *Among the Celts and Gauls*] Who are reckoned for one and the same people; as for instance, those *Gauls*, who removed into the *Lesser Asia*, mixing with the *Greeks*, were called *Gallo-Graci*, but by the *Greeks* were styled Γαλάται, whence by contraction, I suppose Κίλται.

L. 41. *Bellagines, that is,* **By-Laws.**] From **By**, that is, a Village, Town or City, and **Lagen**, which in *Gothish* is a Law; so that it signifies such Laws, as Corporations are govern'd by. The *Scots* call them **Burlaws**, that is, Borough-Laws. So that *Bellagines* is put for *Bilagines* or *Burlagines*. This kind of Laws obtains in Courts *Leet* and Courts *Baron*, and in other occasions, where the people of the place make their own Laws.

CHAP. II.

Pag. 4. l. 7. *Adrastia, Rhamnusia & Nemesis.*] Which is all but *Nemesis* the Goddess of Revenge, called *Adrastria* from King *Adrastus*, who first built her a Temple; and *Rhamnusia* from *Rhamnus* a Village in the *Athenian* Territory, where she was worshipped.

L. 42. *Elohim, that is, Gods.*] And so *Judges* are properly called according to the original notation of the word, whose Root אלה *alah*, though in *Hebrew* it signifie to *curse*, yet in the *Arabick* Language, a descendent of the *Hebrew*, it betokens to *judge*. Thus 'tis said in the *Psalms*, *God standeth in the Congregation of the Gods*, and *I have said, Ye are Gods*, &c.

L. 45. *It subjoins to it the name of God.*] To wit, that Name of his אל *El*, which signifies a *mighty God*. In this sense *the Cedars of God* are lofty stately Cedars; and by *Moses* his being *fair to God*, is meant, that he was exceeding fair.

Pag. 5. lin. 18. *Not only Berecynthia, but also Juno, Cybele.*] Why! *Cybele* is the very same Goddess, who was called *Berecynthia* from *Berecynthus*

cynthus a Hill of *Phrygia* (as also *Cybelus* was another) where she was worshipped. And she had several such Names given her from the places of her worship, as *Dindymene, Pessinuntia, Idæa, Phrygia.* This then was a slip of our worthy Author's memory or his haste.

CHAP. III.

Pag. 5. lin. 34. *Not by the number of dayes, but of nights.*] Thus in our common reckoning we say a **Sennight**, that is, *seven nights*; *septinoctium*, for what in *Latin* they say *septimana*, seven mornings; and a **fortnight**, that is, *fourteen nights.* Again for *Sundayes* and *Holy-dayes*, the Evening, which concludes the fore-going day, is said to be their **Eve**, that is, *Evening.* And the *Grecians* agree with us in setting the night before the day, in that they call the natural day, which is the space of twenty four hours, comprehending day and night, Νυχθήμερον, *Night-day*, not *Day-night.*

CHAP. IV.

Pag. 6. lin. 22. *King Phranicus.*] It is so ordinary a matter for Historians, when they treat of things at great distance of time, to devise Fables of their own, or take them up from others, that I doubt not but this *Phranicus* was designed to give name to *France*; whereas it was so called from the *Franks*, who came to plant there out of *Franconia* a Countrey of *Germany*, called *East-France.*

L. 29. *With Corinus one of the chief of his company.*] From whom *Cornwall* had its name, formerly called in *Latin Corinia* or *Cornavia* (say some) now *Cornubia.* And possibly if that were so, *Corinium* also or **Cirencester**, a Town in *Glocestershire*, and *Corinus* too, the River **Churne**, that runs by it, owe their appellations to the same Noble person.

L. 31. *New Troy, that is, London.*] Called also *Troynovant*, and the people about it called *Trinobantes* or *Trinovantes*, from whom also the City it self was styled *Augusta Trinobantum*, that is, the Royal Seat of the New *Trojans.*

L. 40. *King Belin.*] Who gave name to **Billinsgate**, that is, *Belin*'s *Gate*, as King *Lud* to **Ludgate.**

Pag. 8. lin. 39. *Eumerus Messenius.*] Some such fabulous Writer as our Sir *John Mandevil*, who tells us of People and Countreys, that are no where to be found in the World.

CHAP. VI.

Pag. 9. lin. 19. *In the time of* Brennus *and* Belinus.] The first of these was General of the *Gauls*, who were called *Senones*, and going into *Italy* with them, sackt *Rome.* There he built the City *Verona*, called by his Name *Brennona*; as he had done *Brennoburgum* now **Brandenburg** in *Germany.* From his prowess and famed Exploits, it is supposed that the *Britans* or *Welsh* do to this day call a King **Brennin.** Of the other, *viz. Belinus*, some mention hath been made already.

CHAP. VII.

Pag. 10. lin. 24. *Locrinus, Camber and Albanactus.*] From the first of these three Brethren, to wit, *Locrinus*, it is said, that the *Welsh* call *England* **Lhoegr**, that falling to the eldest Sons share; from the second *Camber*, that a *Welsh*-man is named **Cumra**, and the Countrey *Cambria*;

bria; and from the third *Albanactus*, that *Scotland*, or at leaſt good part of it retains the term of *Albania*, a title ſtill belonging to the King of *Britain*'s ſecond Brother, the Duke of *York*. Though for my part for this laſt name of *Albanactus* I am ſomewhat of opinion, that it might be deviſed by ſome ſmattering Monk purpoſely in favour of the *Trojan* Story, as much as to ſay in a mungrel word *Albæ ἄναξ* King of *Alba*, a City of *Italy* built by one of *Æneas* his Sons.

L. 29. **Gavelkind.**] From the *Saxon* **gafel** or **gafol**, a Debt or Tribute, and **cyn** or **kynd**, the Kindred or Children; or, as Mr. *Lambard*, **gif eal cyn**, *i. e.* given to all who are next of Kin; or, as *Vorſtegan*, **give all kind**, *i. e.* give to each Child his part. An ancient cuſtom of the *Saxons*, whereby the Fathers Eſtate was equally divided amongſt his Sons; as it is ſtill amongſt the Daughters, if there be no Sons. It obtains ſtill in ſeveral places, eſpecially in *Kent* by the conceſſions of the *Conqueror*.

Pag. 11. lin. 22. *The Laws of ſecond Venus.*] Not having *Plato* by me, nor any other means to inform my ſelf better, I imagine that by the *firſt Venus* they mean the force of Luſt and Beauty, which doth ſo naturally incline people to a deſire of union and copulation; and by the *ſecond Venus* conſequently is intended that prudential reaſon, by which men according to wholſome and equal Laws eaſily ſuffer themſelves to be gathered into Societies, and to comply with one another in mutual indearments.

P. 12. lin. 12. *Jupiter*'s *Regiſter.*] Διὸς διφθέρα in the *Greek* Proverb, is the skin of that Goat, which nurſed him in his Childhood, of which after her Death in honour of her memory, and reward of her ſervices, he made his *Regiſter*, to enroll therein and ſet down upon record all the concerns of mankind.

Lin. 15. *Of ſome Æthalides.*] He was the Son of *Mercury*, and had the priviledge allowed him to be one while among the living, another while among the dead, and by that means knew all that was done among either of them. The Moral is plain, that he was a great Scholar, who what with his refin'd meditation and ſtudy of Books, which is being among the dead, and what by his converſation with men, had attained great knowledge and prudence: So that *Pythagoras* himſelf, as modeſt as he was to refuſe the Title of *Wiſe* man, and to content himſelf with that of a *Philoſopher*, that is, a Lover of Wiſdom, yet was fond of the counterfeit reputation of being thought to be He, giving out according to his own Doctrine of *Tranſmigration*, that he was the man.

CHAP. IX.

P. 14. lin. 6. *What? that thoſe very Letters*, &c.] The Authors expreſſion here may ſeem ſomewhat obſcure; Wherefore I think fit to ſet down this by way of explication. He ſayes, that the Letters which the *Greeks* uſed in *Cæſar*'s time, and which we now uſe, are rather ſuch as the *Greeks* borrowed from the *Gauls* than what they had originally of their own. This he proves in the end of this Paragraph by the judgement of ſeveral Learned Men. So then, if this were ſo, *Cæſar*, who without all queſtion was well enough acquainted with the *Greek Letters* then in uſe, yet in all likelihood did not ſo well know what the true old *Gallick Letters* were, the people being ſtrangers to the *Romans*, and he having but lately had any converſe with them, and ſo might very probably miſtake, in thinking that, becauſe the Letters were the ſame,

ſame, the *Gauls* might borrow the *Greek* Letters to make uſe of; whereas the contrary (to wit, that the *Greeks*, after the diſuſe of the *Phœnician* Letters, which *Cadmus* had brought over into *Greece*, took the *Gallick* in their ſtead) is averr'd by *Lazius*, *Becanus*, &c.

CHAP. X.

Pag. 15. lin. 12. *From the ſixth Moon.*] Whether that were from the *ſixth Month* they began their reckoning, which among the *Romans*, was *Auguſt*, therefore called formerly *Sextilis*, as the reſt that follow according to order, are ſtyled *September*, *October*, *&c.* or whether it were from the *ſixth day* of the Moon's age, (as they apply by way of Proverb *Quartâ Lunâ nati* to the unfortunate, *Hercules* having been born on ſuch a day of the Moon) is none of my buſineſs to determine, but to leave it to the Readers own inquiry and judgement.

Lin. 17. *Neſtor's triple age.*] Which if it be reckoned according to this account of Thirty Years to an Age, makes but Ninety years in all. And though that alſo be a great Age for a man to handle Arms, and to attend the duty and ſervice of War, yet that is not ſo extraordinary a caſe, but that others may be found in Story to ſtand in competition with him. Beſides it falls ſhort of that deſcription, which *Homer* hath given of him, τῷ δ' ἤδη δύο μὲν γενεαὶ κλ. μὴν ὃ τείατοισιν ἀνάσσειν. Which implyes, that he had out-lived *two* Generations (to wit, the *Fathers* which had been bred up with him, and the *Sons* which had grown up into his acquaintance) and that now he reigned among the *Grand-children*, the *Third* generation, the two former having been ſwept off the Stage. And in this ſenſe the *Latins* took it, as appears by *Horace*, who ſayes of him *ter Ævo functus*, that he had gone through the courſe of nature, lived out the life of man, three times over; and in that he is ſtyled by another old Poet *triſecliſenex*, that is, the Three hundred years old Gentleman; for as *ævum* in the one ſignifies the whole ſpace of humane life, ſo *ſeculum* in the other is conſtantly taken for a Hundred years.

Pag. 16. lin. 2. *Greece, all over Italy.*] For all the lower part of *Italy* was at that time inhabited by the *Greeks*, and from them called *Magna Græcia*, or *Græcia Major*, in oppoſition, I ſuppoſe, only to *Sicily* the neighbouring Iſle, as being alike inhabited by *Greeks*, but of leſs extent.

Lin. 18. *Voitland.*] A Province of *Germany*, in the *Upper Saxony*.

Lin. 21. *Having their heads uncovered.*] That as they were bare-footed, ſo they were bare-headed alſo, perfect *Gymnoſophiſts*. The *Latin* is *nudis pedibus*, *capita intecta*, *Græcanico pallio & cucullato*, *penulâque*, and may be rendred indeed, *having their heads covered* or muffled. But how? *With a Pall hooded and a Satchell.* I, but what had the *Satchell* to do with their heads, that hung at their ſide, and ſo they are pictured. But to paſs this, Reader, thou art at thy own choice, to take which interpretation of the two thou wilt; for the *Latin* word *intecta*, as I ſaid, admits of either.

CHAP. XII.

Pag. 18. lin. 10. *The Women carried it for* Minerva *againſt* Neptune.] There is another account given of this Story, that theſe two Gods being in a conteſt, which of them ſhould be intitled to the Preſidence of this City *Athens*, they did each of them, to oblige the Community in their

their favour, by a Miracle cauſe to riſe out of the ground, the one (*Neptune*) an *Horſe*, to denote Proweſs and warlike Courage, the other (*Minerva*) an *Olive*-tree loaden with fruit, an Emblem of Peace and Fruitfulneſs; and that the Citizens preferr'd the latter, as the greater merit and more welcome bleſſing.

Lin. 26. *Juno, Salacia, Proſerpina.*] *Juno* was *Jove* the *Thunderer*'s Conſort, as *Proſerpine* was the forc'd Mate of grim *Pluto*, the infernal Queen. The third, *Salacia*, Lady of the Sea, was Wife to *Neptune*, as S. *Auſtin* hath it out of ſome of the old *Roman* Writers: though among the Poets ſhe generally paſs by the name of *Amphitrite*.

Pag. 19. lin. 25. *Amalaſincta, Artemiſia, Nicaula*, &c.] Theſe brave Ladies or She-Heroes are famous upon record, and need not any thing further for their commendation, but their Name. This *Artemiſia* mentioned here, was not the Wife of *Mauſolus*, a vertuous and magnificent Woman too, but another who lived in *Xerxes*'s time, a great Commandreſs, in alliance with him. *Nicaula*, it ſeems, though whence he learn't her Name, I cannot tell, for Scripture gives it us not; was ſhe, who is there called the *Queen of the South*, a great admirer of *Solomon*'s Wiſdom.

CHAP. XV.

Pag. 25, 26. The *Inſcriptions*, which are left un-engliſhed, are only brought in, to evidence, that there were ſeveral *Roman Colonies*, beſide that at **Maldon**, called *Colonia Victricenſis*, planted up and down in *Britain*; to wit, at *York*, at *Cheſter*, at *Gloceſter*, and I doubt not but at *Colcheſter* too, no leſs than there was one at **Cullen** in *Germany*, as the very name of them both imports, *Colonia*. And that ours hath an addition of **Cheſter** to it, is uſual to ſome other Cities: **Colcheſter** for **Colnchester**, which in *Latin* would be *Colonia Gaſtri*, or rather *Coloniæ Caſtrum*, the Caſtle or Garriſon of the Colony.

CHAP. XVI.

Pag. 28. lin. 11. *Now you for your part are Gods Vicegerent in the Kingdom.*] They are the words of Pope *Eleutherius* in his Letter to *Lucy*, the firſt Chriſtian King, which was in the year of our Lord 183. From whence we may fairly conclude, that in thoſe early dayes, the *Pope of Rome* according to his own acknowledgement had no ſuch pretenſions as now for ſeveral Ages ſince they have made, upon the Rights of Princes, to the great diſturbance of the World, and reproach of Chriſtian Religion. And indeed this is the more conſiderable, in that ſuch was the ſimplicity of devotion in thoſe early Converts, and ſuch the deference, which Princes who embraced the Chriſtian Faith, eſpecially from the Miſſionaries of *Rome*, had for that *Holy See*, as appears by this one ſingle inſtance; that it had been no hard matter, nor could be judged an unreaſonable thing, for them to lay claim to a right, and aſſert a power, which was ſo voluntarily offered. Further I add, that ſeeing the *Donation of Conſtantine*, beſides that it was alwayes look't upon as a piece of forgery, was at beſt, ſuppoſing it true, but an Imperial Grant and Conceſſion, which would not be of authority enough to bear up the *Popes Supremacy* in all other Kingdoms of the earth; and ſeeing Pope *Boniface*, who was the firſt that with bare face own'd it, his complyance with *Phocas* was ſo groſly wicked, that none of their own Writers but are aſhamed to make that tranſaction betwixt thoſe

two,

two, an argument for the Papal pretence: Seeing, I say, it is so, if the Pope be intitled, as their *Canonists* pretend, to an Universal Dominion by vertue of his Office, and by Commission from *Christ* and his chief Apostle S. *Peter*, how came it to pass, that the Bishops of *Rome* all along till *Boniface*, were so modest, as not to challenge any such rights or powers; nay, upon occasion to declare against such pretences, as *Antichristian*; which, if that be true, that the *Pope* is by his Office, and by a Divine Commission instated into a *Supremacy*, was in effect no less, than to betray the cause of *Christ* and his *Church*: how came it to pass, that *Eleutherius* should neglect such a seasonable and exemplary opportunity of maintaining and exercising his right, and should rather chuse to return it in a complement back to the King his Convert? *VICARIUS verò DEI estis in Regno*, sayes he, *You are GOD's VICAR in your Kingdom:* which Title now the *Pope* doth with as much arrogance challenge to himself, as here one of his Predecessors doth with modesty ascribe to the *King*.

Lin. 32. *With the title of* Spectabilis.] Towards the declension of the *Roman* Empire, it was usual so to distinguish great Offices with peculiar Titles, as *Spectabilis, Clarissimus, &c.* so among the *Italians*, *Magnifico* to a Senator of *Venice*, *Illustrissimo* to any Gentleman, *Eminentissimo* to a Cardinal: So with us the term of *Highness* is given to a *Prince* of the Blood, *Excellence* to a *Vice-Roy* or a *Lord Lieutenant* and to a *General* of an Army, *Grace* to an *Arch-bishop* and to a *Duke*, *Honour* to a *Lord*, *Worship* to an *Esquire*, &c.

CHAP. XVII.

P. 29. lin. 43. *Fabius Quæstor Æthelwerd.*] Why he calls him *Fabius Quæstor*, is at present past my understanding. Did he take upon him a *Roman* name? Was he in any such Office as *Quæstor*, *i.e.* Treasurer or Receiver General, wherein he behaved himself like a *Fabius*? or did he intitle his Book by that name? I am to seek.

CHAP. XVIII.

Pag. 31. lin. 19. *Whatsoever there was in* Pandora *of Good and Fair.*] She was a Woman made by *Jupiter*'s own order, and designed to be the pattern of female perfection: to which end all the Gods contributed to the making of her several gifts, one Wisdom, another Beauty, a third Eloquence, a fourth Musick, *&c.*

CHAP. XIX.

P. 32. lin. 27. **Wapentakes.**] Which in some of our Northern Countreys is the same as we call other-where a *Hundred*, from the *Saxon* word **wæpen**, i.e. *arms*, and **tac**, i.e. *touch*; as one should say, a touching or shaking of their Arms. For, as we read it in King *Edward*'s Laws, when any one came to take upon him the Government of a *Wapentake*, upon a day appointed all that owed suit and service to that Hundred, came to meet their new Governour at the usual place of their Rendezvouz. He upon his arrival, lighting off his Horse, set up his Lance an end (a Custom used also among the *Romans* by the *Prætor* at the meetings of the *Centumviri*) and according to custom took fealty of them. The Ceremony of which was, that all who were present, touch't the Governours Lance with their Lances, in token of a confirmation: whereupon that whole meeting was called a **Wapentake**, inasmuch

inasmuch as by the mutual touch of one anothers Arms, they had entred into a confederacy and agreement to stand by one another. This fashion, they say, the *Saxons* took up from the *Macedonians* their Progenitors. Others will have it from **tac** to take, and give this account of it, that the Lord of the Hundred at his first entrance upon the place was used to take the Tenants Arms, surrendred and delivered up to him by themselves, in token of subjection by way of Homage. Sir *Thomas Smith* differs from both these; for he sayes, that at the Hundred meeting, there was a Muster taken of their Weapons or Arms; and that those who could not find sufficient Pledges for their good abearing, had their Weapons taken away; so that in his sense a **Wapentake** is properly *Armilustrium*, and so called from taking away their Weapons or Arms, who were found unfit to be trusted with them.

L. 40. *For the Ceremony of the Gown.*] He alludes to the *Roman* Custom, with whom the youth, when they arrived at mans estate, were then allowed to wear *togam virilem*, to put on a *Gown*, the habit of men; whereas before that, they were obliged to wear a Coat peculiar to the age of Childhood, called *Prætexta*: whence *Papyrius*, though yet a Child, being admitted into the Senate-house for his extraordinary secrecy and manly constancy, was called *Papyrius Prætextatus*.

Pag. 33. lin. 9. **Morgangbeb.**] Or **Morgingab**, from **Morgin**, which in *High Dutch* signifies the *Morning*, and **gab**, a *gift*; to wit, that Present, which a man makes to his Wife, that morning he marries her.

CHAP. XX.

Pag. 34. lin. 3. *Tityus his Liver.*] A Gyant, who for ravishing of *Latona* was adjudged to have his *Liver* after death prey'd upon continually by a Vulture, which grew up again as fast as it was wasted. The equity of which punishment lay in this, that the *Liver* is reputed the source and seat of all lusts and unlawful desires, and doth naturally, as some Physicians hold, receive the first taint of Venereal distempers (the rewards of impure mixtures) according to that of *Solomon*, speaking of an Adulterer, *Till a dart strike thorough his Liver*; from whence they gather, that that, which we now call the *French Pox*, was not unknow even in that age of the World.

L. 26. *Prema and Mutinus.*] This latter a Title given to *Priapus*, much-what such a God, as *Baal Peor* was; the other a Goddess forsooth much to the same purpose. For the old *Romans* had *Gods* and *Goddesses*, as the present *Romans* have *Saints*, for every thing, for every action of life. But their Offices were such, as the modest Reader will easily excuse the want of explaining them.

Lin. 38. *Sayes* Progne *to her Sister* Philomel.] *Tereus* King of *Thrace* having married *Progne* Daughter of *Pandion* King of *Athens*, when he went to fetch her Sister *Philomel*, ravished her by the way on Shipboard; which occasioned a bloody revenge in the murder of his Son *Itys*. At last they were turned all four into so many several sorts of Birds; *Progne* into a Swallow, *Philomel* into a Nightingale, *Tereus* into a Lapwing, and *Itys* into a Pheasant.

CHAP. XXI.

Pag. 36. lin. 20. *With head-money called* **Wergild.**] A word compounded of the *Saxon* **were**, the price or value or worth of a man, and **geld** or **gild**, a payment. That is, he that had killed another, was to buy

buy off his life, by paying the full value of the perſon ſlain. The prizes or rates are ſet down in *Ethelſtan*'s Laws, by *Thrimſa*'s, a kind of Coyn, or piece of money, of the value of three ſhillings, ſaith Mr. *Lambard*; which being reduced to our *Sterling* ſtand thus.

A Peaſant,	40 *l.* 1 *s.*
A Thane, or one in Orders,	300 *l.*
A General, or Chieftain,	600 *l.*
A Biſhop, or Alderman,	1200 *l.*
An Arch-Biſhop, or Peer,	2250 *l.*
And a King,	4500 *l.*

Half of which laſt ſumm was to go to the Kindred, and the other half to the publick. And theſe Rates are ſet, he ſayes, by the Common Law of the *Engliſh*. The reaſon of this pecuniary compenſation, was their tenderneſs of life, that two men might not dye upon the account of the ſame miſchance, according to that ſaying in an ancient Law, *Nulla ſit culpa tam gravis, ut vita non concedatur, propter timorem Dei.* But yet withal in ſome caſes of premeditated or clandeſtine murder, they were not excuſed from making ſatisfaction with their life; or in caſe one were not able to pay the **were**, or Fine, he was puniſhed with death. I called this *Head-money*, becauſe in *Latine* it is termed *capitis æſtimatio*, the value or price of a mans head: not in that ſenſe as either *Chevage* or *Poll-money* is ſo called.

CHAP. XXII.

Pag. 37. lin. 42. In the Margin *Caxton* is quoted, a Book, it ſeems, rare; of which he ſaith, That Book, that goes up and down by this name, Mr. *Warin Townſend* of *Lincolns-Inn*, a Gentleman Noble by his Deſcent and Learning both, very friendly lent me for my uſe in a very fair Manuſcript; which courteſie of his, I cannot but think it a foul ſhame for me, not to own and acknowledge with all thankfulneſs.

Pag. 38. lin. 17, 18. *Even now in the time of thoſe that are called the Good.* 'Tis *William* of *Malmesbury*, whom he quotes; *etiam nunc tempore Bonorum.* Whether he mean *Good Princes*, who would have thoſe Laws obſerved, or *Honeſt Subjects*, who would obſerve them, or whether there were any ſort of men in his time that went by that Character of *Boni*, good men, is more than I have to ſay. There was at one time a ſort of Religious perſons, that went by the name of *Bon Hommes*; but that can have nothing to do in this buſineſs.

CHAP. XXIII.

Pag. 39. lin. 14. *Every Native home-born lawful man.*] In the *Latin* it is *Indigena legalis*, in the *Saxon* Law-term it is **Inlaughe** or **Inlaugh**, that is, one that is under the Law, *Inlagatus*, who is in *Frank pledge*, or belongs to ſome *Court Leet*: as all Males from twelve years old and upwards were obliged to be. So *Bracton* tells us.

Lin. 27. *Decenna.*] The ſame as *Decuria*, which is generally rendred a *Tithing*, *i. e.* a Company of ten men with their families, all of them bound to the King to anſwer for one anothers good and peaceable behaviour. From the *Latin* word it is called a **Dozein**, and the people that belong to it are called *Deciners* or **Dozeniers**, that is, *Decennarii*. The chief of them is termed *Decurio* or *Decanus Friburgi*, the *Tithing-*

man or *Headborough*. And all Males of twelve years age and upwards (except Nobles and Religious persons) were obliged to be of some *Dozein* or other. But now there are no other *Dozeins* but *Leets*, and no other security there given for the Kings Peace, but the persons own Oath.

Lin. 29. **Friborgh.**] From the *Saxon* **freo**, *free*, and **borgh** a *surety* or security: or, as some write it, **Fridburgh**, from **frid**, *peace*, and **burgh**, *a surety*. If it be taken for the person, it is the same that a **Decíner** (we now spoke of;) if for the action, it is their being sureties for one another: if for the company of these mutual ingagers, 'tis the same as *Decuria*, a Tything, in *Saxon* **tienmannatale**, *i. e.* the number of ten men. The *Normans* retained the same custom, but altered the name, calling it **Frankpledg**, from the *French*, *Frank*, i. e. *free*, and **pledg**, i. e. *surety*. And the compass or circuit of this *Frankpledg* the same as that of **Friburg**, to wit, the *Decenna* or **Dozein**, *i. e.* ten households.

Lin. 40. *Manupastus.*] Of this *Bracton* sets down a Rule for Law, that every person, whether free-man or servant, either is or ought to be in frank-pledge or of some bodies **mainpast**. Now he is of ones *Mainpast*, saith he, who is allowed Victuals and Clothes, or Victuals only and Wages. And this was the reason, why great men were not obliged to be of any ordinary *Dozein*, because Bishops, Earls and Barons, as the same *Bracton* informs us, ought to have their menial servants in their own *Friborgh*, and to answer to the King for their behaviour, and to pay what forfeits they should make, if they had not the persons themselves forth-coming. And this, sayes he, is the case of all those who are of any ones **Mainpast**.

CHAP. XXIV.

P. 41. lin. 16. *John Scot Erigena.*] A School-man famous for his subtilty, called in *Latin*, *Johannes Duns Scotus*. Whether **Duns** were the Name of his Family, as it might be, *Johannes de Dunis*, which in *English* would be **John Downs**; or whether it were a Nickname given him for his slovenliness and seeming blockishness, from the word **Dunce**, which in Barbarous *Latin* is *Dunsa*, (For so in *Camden's Remains* we find the Emperour *Charles*, as I take it, putting that question to him, as he sate at Table over against him, *Quid interest inter Scotum & Sotum*, What difference between a *Scot* and a *Sot*? to which he as freely replyed, *Mensa*, the Table, Sir) I shall not determine. But *Scotus* or **Scot**, is the name of his Countrey, he being a *Scotch*-man, and for that reason called also *Erigena*, that is, *Irish born*, to wit, a *Highlander*; for those people were originally *Irish*, and came out of that Island over into the North parts of *Scotland*. Now *Ireland* is by several Authors *Greek* and *Latin* called *Ierna*, and by the Inhabitants themselves **Erin**.

L. 43. *The Goddess Anna Perenna.*] The Lady President of the year, *Anna ab Anno*; to whom they addrest their devotions, that she would *perennare*, that is, preserve and continue health and plenty and prosperity from year to year; for which reason she was called *Anna Perenna*. Now our Author here brings in long-lived *Nestor* and this Goddess, to shew that those good fellows in quaffing of healths, do wish *muchos annos*, as the *Spaniard* saith, many and many a years life to their absent friends, while in the mean time by tossing off so many bowsing Canns, they shorten their own lives.

Pag.

Pag. 42. lin. 24. **Englescyre.**] Or **Englecerie**, that is, the being an *English*-man. For there was a Law made by King *Knute*, in favour of his *Danes* (and so afterward it was interpreted in behalf of the *Francigenæ*, *French*-men, or whatever foreigners) that if any such were privily murdered or slain, the Village, where the fact was done, should be amerced in a lusty fine to the King, unless they could prove **Englecerie**, that is, that the murdered person was an *English*-man, one born of *English* Parents, in which case there was no fine levied. So that the *Danes* and *French*, when they governed here, provided they might secure themselves from the *English*, were well enough content to let them destroy one another.

CHAP. XXV.

Pag. 44. lin. 11. *An Olympiad.*] An account of time used by the *Greeks*, consisting of four years, so called from the *Olympick* Games, which were celebrated in honour of *Jupiter Olympius* every fifth year. This reckoning began first in the year of the World three thousand one hundred seventy four.

In the SECOND BOOK.

CHAP. I.

PAg. 48. l. 5. *By right of* **Freehold.**] *Allodii jure*, that is, by a mans own right, without acknowledgment of service or fealty, or payment of Rent to any other as a Superiour Lord. In which respect it is opposed to an Estate in **Fee**, wherein though a man hath a perpetual right to him and to his heirs for ever, yet seeing he owes a duty and service for it, it cannot be said properly and simply to be his own. And such are all ~~mens~~ Estates here in *England*, but the Kings in the right of his Crown, who cannot be supposed to hold of another, or to owe fealty to any Superiour, but to God only.

Lin. 12. *Under Military service.*] Or **Knights service**, that is, to find the King such a number of Men and Arms in time of War, as it is here expressed. See *Cowell* in the word **Chivalry.** Indeed the Clergy before the *Conquerour* in the time of the *Saxons* (as we find it in the five and twentieth Chapter of the first Book) were allowed to be free from Secular Services, but with an Exception and Reserve however of these things, *to wit*, Expedition, Repairing of Castles and Building of Bridges, from which last duty the High-Priests among the *Romans* were called *Pontifices*, *i. e.* Bridge-makers. Now this bringing of the Bishops Baronies under *Knights Service*, was sure enough design'd to engage them into a close dependence upon the Crown, and to take them off from hankering after any forreign Power, to which they might pretend to owe any subordination; as all along the times of Popery, out of reverence to the *Holy See*, they were forward enough upon occasion to think themselves obliged to do, even to the high discontent and great disservice of their Kings.

CHAP. II.

Pag. 51. lin. 12. *Ready money.*] So I render *Viva pecunia*: which though *Spelman* saith it is so called, that it may the more expresly signifie *pecudes*, *i. e.* Cattle; yet he doth not to me, I confess, make out by any fair instance that it doth ever so signifie; and that it cannot be taken in that sense here, is plain from what immediately goes before, *quot animalia, imò quantum vivæ pecuniæ quisque possidebat*: where *animalia* living creatures include *pecudes* the Cattle.

CHAP.

CHAP. III.

Pag. 54. lin. 32. **Bolcham.**] What Earl *Godwin*'s trick was, or wherein the conceit lay, I cannot at preſent well imagine, unleſs it were in the equivocation or miſunderſtanding of the word **Bolcham**, as it falls in with the word **Boſom** in the pronunciation and ſound of it; thus. Suppoſing the Earl at meeting of the Arch-Biſhop, coming up to him upon pretence of ſaluting him ſaid, *Give me your* **Bolcham**, *my Lord*; to which the Arch-Biſhop thinking belike, he might, by way of deſiring his Paſtoral embrace, mean only his **boſom**, readily made anſwer, *I give you my boſom*; which the Earl with a cunning fetch interpreted a Grant of his Eſtate of **Bolcham**.

Pardon, Reader, my miſtake, if it be one; ſince I have no better account, from my own gueſs, to give, meeting with no help from our Law-Dictionaries.

CHAP. IV.

P. 56. lin. 8. *The firſt* **Sheriffs** *of Counties.*] A **Sheriff** or **Shyre-reed** ſignifies the Governour of a County, called in *Latin Vice-comes*, as Deputy to the Count or Lord or Chief Man of the County; though even in the *Confeſſor*'s time he was reckoned the Kings Officer, and not the Counts. This Office, as Mr. *Camden* tells us, was firſt ſet up by King *Alfred*, who alſo divided *England* into Counties, and thoſe Counties again into Hundreds and Tythings.

Lin. 29. *Other Judges without appeal.*] This ſhould ſeem to be the Court of **Chancery**: for which reaſon the Lord *Chancellor* is ſaid to keep the Kings conſcience, as here theſe Judges are compared to the Kings boſom.

Lin. 37. *Acting a* Buſiris *his part.*] *i. e.* Treating ſtrangers ill; he being a cruel Tyrant of *Egypt*, who ſlew ſtrangers, and ſacrificed them to his Gods: whence the Proverb, *Buſiridis aræ.*

Pag. 57. lin. 39. *that he ſhould pay it at the Scale.*] That is, ſhould pay it by weight, or according to full weight.

CHAP. VI.

Pag. 60. lin. 17. *Being Lord Chief Juſtice of the whole Kingdom.*] In the *Latin* it is thus expreſſed; *totius regni placitator & exactor*: where I confeſs the former title of the two gave me the occaſion of my miſtake, as if he had been Chief Juſtice of the *Common Pleas*: whereas I ſhould rather have rendred it thus; *who had been* (to wit, in King *Rufus* his time) *Pleader or Demander and Receiver of the Kings duties throughout the whole Kingdom.* For ſuch an Officer this *Exactor regius* was, otherwiſe called *Graſio.* See *Spelman* upon both thoſe words.

Lin. 39. *In the times of the Saxons a* **Hereot.**] This at firſt was a tribute given to the Lord for his better preparation towards War; but afterward though the name were kept, the thing was altered, being taken for the beſt Chattle, that the Tenant hath at the hour of his death, due to the Lord by cuſtom, be it Horſe, Ox, *&c.* That *Hereot* and *Relief* do not ſignifie the ſame thing, appears by this, that they are both often found to be paid out of one and the ſame Tenure, and again that the heir

heir alway ſucceeds into the Eſtate upon the payment of the *Relief*, but not alwayes upon the payment of the *Hereot*.

Lin. 42. *In French is called a* **Relief.**] From the Verb *Relever*, to raiſe again and take up the Eſtate which had faln into the Lords hand by the death of the Anceſtor. It is a ſumm of money, which the new Homager, when he is come to age, payes to the Lord for his admiſſion or at his entrance into the eſtate. Whence by the old Civilians 'tis called *Introitus*, and in *Greek* εἰσιτήριον. This ſumm was moderately ſet; wherein it differed from **Ranſom**, which was much more ſevere. The Kings rates upon his Homagers were thus: An Earls heir was to give an hundred Pounds, a Barons an hundred Marks, a Knights an hundred Shillings at moſt; and thoſe of leſſer eſtate leſs, according to the ancient cuſtom of their Tenures: as *Spelman* quotes it out of the Charter of *Henry* the Third.

Pag. 61. lin. 11. *Of the greater* **Vavaſors.**] They were a ſort of Gentlemen next in degree to the Barons. They did not hold immediately of the King, but of ſome Duke, Marqueſs or Earl. And thoſe that held from them again, were called *Valvaſini*, or the leſſer *Vavaſors*. There is little certainty what their Offices or Priviledges were, or indeed whence they were ſo called; whether *qu. ad valvas ſtantes*, or *valvæ aſſidentes*, for their ſitting or ſtanding at their Lords door, (if thoſe of that quality did ſo) as ſome would have it; or that they kept the doors or entrances of the Kingdom againſt the enemies, as *Spelman* ſayes; or whether from *Vaſſalli*, as the Feudiſts derive the name, from that inferiour Tenure they had mediately from the King by his great Lords; which ſeems the more likely, becauſe theſe *greater Vavaſors*, who did ſo hold, are ſometimes termed *Valvaſores regii* and *Vaſſi dominici*, that is, the Kings Vaſſals.

Lin. 27. *Her Dowry and right of Marriage.*] In the Latin it is *dotem ſuam & maritagium*. Now *Dos* is otherwiſe taken in the *Engliſh*, than in the *Roman* Laws; not for that which the man receives with his Wife at marriage, a *Portion*: but for that which the Woman hath left her by her Husband at his death, a *Dowry*. And *Maritagium* is that which is given to a Man with his Wife, ſo that 'tis the ſame as *Dos* among the *Romans*, ſaith *Spelman*. But this is too general, I think, that the man ſhould be obliged to return at his death *all* to his Wife that he had with her, beſide leaving her a Dowry. I am therefore rather inclined to *Cowell*, who tells us, *Maritagium* ſignifies *Land* beſtowed in marriage; which, it ſeems, by this Law was to return to the Wife, if her Husband dyed before her. The word hath another ſenſe alſo, which doth not belong to this place, being ſometime taken for that which Wards were to pay to the Lord for his leave and conſent that they might marry themſelves, which if they did againſt his conſent, it was called *Forfeiture of marriage*.

Lin. 35. *The common Duty of Money or Coinage.*] So I render the word *Monetagium*. For it appears, that in ancient times the Kings of *England* had Mints in moſt of the Countreys and Cities of this Realm. See *Cowell* in the word *Moniers*. For which priviledge, 'tis likely, they paid ſome duty to the chief place of the Mint. Thus in *Doom-ſday* we read, as *Spelman* quotes it, that in the City **Wineceſtre** every Monyer paid twenty ſhillings to *London*; and the reaſon given, *pro cuneis monetæ accipiendis*, for having Stamps or Coins of Money. For from this *Latin* word *Cuneus* (which our Lawyers have turned into *Cuna*, from whence

whence the Verb *Cunare*) comes our *Engliſh* word **Coyn.** Now it is more than probable, that the Officers of the Chief Mint might by their exactions upon the inferiour Mints give occaſion for the making of this Law.

Lin. 42. *Or Children or Parents.*] By *Parent* here we are to underſtand not a Father or Mother, but a Couſin, one a-kin; as the word ſignifies in *French*, and as it is uſed in our Laws. And indeed the *Latin* word it ſelf began to have that ſenſe put upon it in vulgar ſpeech, toward the declenſion of the Empire, as *Lampridius* informs us.

Pag. 62. lin. 21. *A pawn in the ſcarcity of his money.*] That is, if he were not able to pay his forfeit *in ſpecie*, *i. e.* to lay down the money, he was to give ſecurity by a pawn of ſome of his Goods or Chattels. See *Cowell* in the word **Gage.** This in *Latin* is called *Vadium*, a pawn or pledge, from *Vas*, *vadis*, a ſurety. Hence *Invadiare*, to pawn or ingage a thing by way of ſecurity, till a debt be paid.

Lin. 23. *Nor ſhall he make amends.*] From the *French amende*, in our *Law-Latin emenda*: which differs from a Fine (or mulct) in this, that the *Fine* was given to the Judge, but *Amends* was to be made to the Party aggriev'd. Now there were three ſorts of this *Amende*, the Greater which was like a full Forfeiture, the Mid-one at reaſonable terms, and the Leaſt or Loweſt which was like a gentle Amercement. This diſtinction will help to explain the meaning of this Law.

L. 30. **Per fœ de hauberke.**] This in *Latin* is called *Feudum Hauberticum*, i. e. *Loricatum*, ſayes *Hotoman*, from the *French* word *Haubert*, that is, a Coat of Mail, when a Vaſſal holds Land of the Lord on this condition, that when he is called, he be ready to attend his Lord with a Coat of Mail or compleat Armour on. Now *Haubert*, as *Spelman* tells us, properly ſignifies a High Lord or Baron, from *Haut* or *hault*, high, and *Ber* (the ſame as *Baro*) a Man or Baron. And becauſe theſe great Lords were obliged by their place and ſervice to wait upon the King in his Wars on Horſe-back with compleat Armour, and particularly with a Coat of Mail on: hence it came, ſayes he, that the Coat of Mail it ſelf was alſo called *Haubert*; though he doth afterward acknowledge that the word is extended to all other Vaſſals, who are under that kind of Tenure. But then at laſt he inclines to think, that the true ancient writing of the word is **hauberk** (not *Haubert*) as it were **hautberg**, *i. e.* the chief or principal piece of Armour; and **Berg** he will have to ſignifie Armour, as he makes out in ſome of its compounds, **Bainberg** Armour for the Legs, and **halsberg** Armour for the Neck and Breaſt: and derives it from the *Saxon* **Beorgan**, *i. e.* to arm, to defend. Add to this, ſaith he, that the French themſelves (and we from them) call it an **haubergeon**, as it were *Haubergium*.

Lin. 33. *From all* **Gelds.**] The *Saxon* word **geld** or **gild** ſignifies a Tribute or Tax, an Amercement, a payment of money, and money it ſelf: whence I doubt not, but the beſt ſort of money was called **Gold.** It is from the Verb **geldan** or **gyldan**, to pay. In *Latin* it is *Geldum*, and not *Gilda*, as *Cowell* writes it. For this ſignifies quite another thing, a Fraternity or Company of Merchants or the like. Whence a **Gild-hall**, that is the Hall of the Gild or Society: ſuch as was once the **Stilyard**, called *Gildhalla Teutonicorum*, the *Gild-hall* for the *Dutch* Merchants from the Hanſe-Towns.

CHAP.

CHAP. VII.

Pag. 63. lin. 25. *Iphis* and *Ianthis* and *Ceneus.*] Perſons mention'd by *Ovid*, who changed their Sex, from Female to Male. *Iphis* was a Maid of *Creet*, who after her *Metamorphoſis* when ſhe turn'd to Man, took *Ianthe* to Wife: and *Cænis* (for that was her Maiden Name) was a *Theſſalian* Girl, whom *Neptune* made a Whore of firſt, and then at her requeſt a Man, who thenceforward went by the Name of *Ceneus.*

Lin. 34. *Cheats, whom they commonly call Coyners.*] In *Malmesbury's* Latin, *Trapezitas, quos vulgò Monetarios vocant.* Which bare citation is all the account, that *Spelman* gives of the word *Monetarius.* It doth properly ſignifie an Officer of the Mint, that makes and coyns the Kings money; a **Monier.** But here by the Hiſtorian's implying that ſuch fellows, as this Law was made againſt, were *falſarii*, Cheats, and by our Author's terming of them *adulteratores monetæ*, Counterfeiters of Coyn: we muſt underſtand them to be Falſe Coyners, Clippers, Waſhers, Imbaſers of the Kings Coyn, and the like. And therefore I render'd *trapezitas* (which otherwiſe is a word of innocent meaning for Money-Changers, Bankers, *&c.*) in the Hiſtorian's ſenſe *Cheats.*

CHAP. VIII.

Pag. 65. lin. 24. *Every* **Hide** *of Land.*] It is ſo called from the *Saxon* word **hyden**, *to cover*; ſo that thus it would be the ſame as *Tectum* in *Latin*, a Dwelling-houſe. And thus I queſtion not, but there are ſeveral houſes called *The* **Hide**: for I know one or two my ſelf ſo called, that is, the Capital Meſſuage of the Eſtate. Nor is it ſo confined to this ſenſe, but that it takes in all the Lands belonging to the Meſſuage or Manour-houſe, which the old *Saxons* called **hidelandes**, and upon ſome ſuch account no doubt **Hidepark** had its name, as a Park belonging to ſome great Houſe. Now as to the quantity, how much a **Hide** *of land* is, it is not well agreed. Some reckon it an hundred Acres, others thereabouts, by making it contain four Yardlands, every Yardland conſiſting of twenty four Acres. The general opinion is, that it was as much as could be ploughed with one Plow in a year, *terra unius aratri culturæ ſufficiens.* And thus it ſhould be muchwhat the ſame as *Carrucata terræ, i. e.* a Plough-land. From *Bede*, who tranſlates it *familia*, they gather it was ſo much as could maintain a family. There is mention made of theſe *Hides* in the Laws of King *Ina*, an hundred years before King *Alfred*, who divided the Countrey into *Counties* or Shires. And Taxes and Aſſeſſments were wont to be made according to theſe *Hides*; up as high as King *Ethelred's* time in the year of our Lord 1008. Since the Conqueſt, *William* the Firſt had ſix ſhillings for every Hide in *England*, *Rufus* four, *Henry* the Firſt here three for the marriage of his daughter.

Pag. 66. lin. 8. *This right is called* **Wreck.**] *i. e.* by which the King claims ſhipwrack't goods caſt on ſhoar. For though by the Law of Nature ſuch things, as being *nullius in bonis*, having no Owner, every one that finds them may ſeem to have a right to them; yet by the Law of Nations they are adjudged to the Prince as a ſpecial priviledge by reaſon of his dignity. Now **Wreck** (or as the *French* call it *Varec*) properly ſignifies any thing that is caſt on ſhoar, as Amber, precious Stones,

Stones, Fiſhes, *&c.* as well as ſhipwrack't goods: from the *Saxon* wræt, *i. e.* any thing that is flung away and left forlorn; though uſe hath limited the word to the later ſenſe.

CHAP. IX.

Pag. 68. lin. 6. *The* Roman *Laws were baniſht the Realm.*] I ſuppoſe there may be ſome word miſſing or miſtaken in the *Latin*, *à regno juſſæ ſunt leges Romanæ:* But that which follows, the forbidding of the Books, obliged me to that interpretation: for why ſhould the Books of thoſe Laws be prohibited, if the Laws themſelves were (as the *Latin* reading ſeems to import) ordered and ratified by the Realm. Wherefore I ſuppoſe ſome miſtake, or omiſſion, and for *à regno juſſæ*, read *à regno pulſæ* or *exulare juſſæ*, *&c.* unleſs you would like to have it thus rendred, *commanded out of the Kingdom*: which I confeſs would be a very odd unuſual conſtruction.

CHAP. X.

Pag. 69. lin. 39. *Three hundred* Marks *of Gold.*] A Mark weigh'd eight ounces, and as *Cowell* ſtates it out of *Stow*, it came to the value of 16*l.* 13*s.* 4*d.* At this rate three hundred Marks of Gold come to five thouſand Pound; and to every Biſhop five Marks, ſuppoſing only ten Biſhops, come to 833*l.* 6*s.* 8*d.* which is a very unlikely ſumm in this buſineſs. 'Tis true, the value of it, as of other Coyns and ſumms, might vary. And ſo we find in *Spelman*, that an uncertain Author reckons a *Mark of Gold* to be worth fifty Marks of Silver. But then 'tis as uncertain, what *Marks of Silver* he means. For if they be ſuch as ours are (and as they were in King *John*'s time) at 13*s.* 4*d.* then a Mark of Gold will be of the value of 33*l.* 6*s.* 8*d.* which is juſt double to the former value of 16*l.* 13*s.* 4*d.* (which being reſolved into Marks of Silver, makes but 25.) But in ancient times a *Mark of Silver* was only 2*s.* 6*d.* ſo that fifty of them will make but 6*l.* 5*s.* Another inſtance we meet with, where one *Mark of Gold* is accounted equivalent to ten *Marks of Silver*; which taking a *Mark* for 13*s.* 4*d.* comes to 6*l.* 13*s.* 4*d.* Another, where nine Marks of Silver paſs for one Mark of Gold, in a payment to the King: which is juſt ſix pound. And theſe *three* laſt accounts agree pretty well together. Taking the middlemoſt of the three, *viz.* a Mark of Gold at ten Marks of Silver; thus the above named ſumm of three hundred *Marks of Gold*, that is, three thouſand *Marks of Silver* amounts to two thouſand Pound; and the five *Marks* to every Biſhop (ſuppoſing but ten Biſhops) come to 333*l.* 6*s.* 8*d.* But if we take theſe *Marks of Silver* at 2*s.* 6*d.* the account will grow much leſs. For ten ſuch *Marks* are but 1*l.* 5*s.* ſo that the three hundred *Marks of Gold* at this rate will come but to 375*l.* Sterling. But that theſe *Marks* of the ancient and lower eſtimate are not here intended, may probably enough be gathered from one paſſage more we find there, *Centum ſolidi dentur vel marca auri*, where, if *ſolidi* ſtand for ſhillings (for they may be taken for *ſoulx* as the *French* call them) a *Mark of Gold* is made of equal value with 5*l.* Sterling. And thus three hundred Marks of Gold come to Fifteen hundred pound.

I confeſs after all, moſt of theſe accounts of the **Mark**, *Gold* or *Silver*, may be admitted of, as having poſſibly at ſome time or other been true; ſince mony, both in its Coyns and Summs, hath in ſeveral Ages of the World, riſen, and fallen according to its plenty or ſcarcity.

Lin. 42. *Being arighted and accuſed of any matter.*] Or rather in the Law-ſpelling **arreſted**; in *Latin rectatus*, that is, *ad rectum vocatus*, convened before a Magiſtrate and charged with a crime. Thus *ad rectum habere*, is in *Bracton*, to have a man forth coming, ſo as he may be charged and put upon his tryal. It may be alſo rendred, *taken upon ſuſpicion.* It is written ſometime *retatus* and *irretitus.*

Pag. 70. lin. 33. *To give ſuretiſhip for the Remainder.*] I confeſs I do not well know how to apply to this place that ſenſe, which our Common Law takes the word **Remainder** in, for a power or hope to enjoy Lands, Tenements or Rents after anothers eſtate or term expired; when an eſtate doth not revert to the Lord or Granter of it, but *remains* to be enjoyed by ſome third perſon. What if we ſay, that as Biſhops could not (becauſe their eſtates are of Alms) grant any part of their Demeans *ad remanentiam*, for ever or to perpetuity, ſo here Excommunicate perſons were not obliged *dare vadium ad remanentiam*, to find ſureties for continuance or for perpetuity, that is, for their future good behaviour, but only to ſtand to the judgement of the Church in that particular caſe for which they were at preſent ſentenced.

CHAP. XI.

Pag. 72. lin. 24. *If a Claim or Suit ſhall ariſe.*] In the *Latin*, *ſi calumnia emerſerit*, a known and frequent word in our Law, which ſignifies a Claim or Challenge, otherwiſe termed *clameum.*

Lin. 37. *Till it ſhall by Plea be deraigned.*] or **dereyned**: which is in *French dereyné*, in the *Latin*, *diſrationatum*, which as it hath ſeveral ſignifications in Law, ſo here it imports, after a full debate and fair hearing, the determination of the matter by the judgement of the Court.

CHAP. XII.

Pag. 75. lin. 2. *By the name of* **Lumen.**] The ſame ſay ſome, as the *Danes* call *yong men.* Others derive the word from the *Saxon* **geman**, or the old *Dutch* **Gemen**, that is, *common*, and ſo it ſignifies a *Commoner.* Sir *Tho. Smith* calls him *Toman*, whom our Laws term *legalem hominem*, a Free-man born (ſo *Camden* renders it by *Ingenuus*) who is able to ſpend of his own free Land in yearly Revenue to the ſumm of Forty Shillings, ſuch as we now, I ſuppoſe, call *Free-holders*, who have a Voice at the Election of Parliament-men. But here the word is taken in a larger ſenſe, ſo as to include ſervile Tenure alſo or Villenage.

CHAP. XIII.

Pag. 77. lin. 5. **Leude-men.**] From the *Saxon* **Leod**, the common people. It ſignified in Law a Subject, a Liege man, a Vaſſal, a Tenant: hence in *High-dutch* a Servant was called **Leute**, in *Old Engliſh* a **Lout.** But in common acception **Lewd** was formerly taken for a Lay-man,

Lay-man, λαϊκὸς, one of the people, or for any illiterate perſon. Now it is uſed to denote one who is wicked or looſe and debauched.

CHAP. XIV.

Pag. 79. lin. 8. *The States of the Kingdom, the* **Baronage.**] He means the whole Parliament, and not only the Houſe of Lords by the word *Baronage*. For though by *Barons*, now we properly underſtand the Peers of the Realm; yet anciently all Lords of Manours, thoſe who kept Court-Baron, were ſtyled *Barons*: Nay *Spelman* tells us, that all Free-holders went by that name before the Free-holds were quit letted out into ſuch ſmall pittances, as now they are, while Noble-men kept their Lands in their own hands, and managed them by their Vaſſals. *Cowell* gives this further account of thoſe Lords of Manours, that he had heard by men very learned in our Antiquities, that near after the Conqueſt all ſuch came to Parliament, and ſate as Nobles in the Upper Houſe. But, as he goes on, when by experience it appeared, that the Parliament was too much peſtered with ſuch multitudes, it grew to a cuſtom, that none ſhould come but ſuch as the King, for their extraordinary wiſdom or quality, thought good to call by Writ, which Writ ran *hâc vice tantùm*, that is, only for this turn. So that then it depended wholly upon the Kings pleaſure. And then he proceeds to ſhew, how after that they came to be made Barons by Letters Patents, and the Honour to deſcend to their poſterity.

Lin. 27. *By way of ſafe pledge.*] That is, to oblige them to give ſecurity for the parties appearance againſt the day aſſigned; who in caſe of default were to undergo the dammage and peril of it.

Pag. 80. lin. 7. *St.* Peter's *pence.*] Theſe *Peter-pence* were alſo called in *Saxon*, **Romeſcot** and **Romeſeoh** (that is, a Tribute or Fee due to *Rome*) and **Rome-penny** and **Heartb-penny.** It was paid yearly by every Family (a Penny a houſe) at the Feaſt of S. *Peter ad Vincula* on the firſt day of *Auguſt*. It was granted firſt, ſayes our Author out of *Malmesbury*, by *Ina* or *Inas* King of the *Weſt-Saxons*, when he went on Pilgrimage to *Rome*, in the year of our Lord 720. But there is a more clear account given by *Spelman* (in the word **Romaſcot**) that it was done by *Offa* King of the *Mercians*, out of an Author that wrote his Life. And it is this, That *Offa* after thirty ſix years Reign having vowed to build a Stately Monaſtery to the memory of St. *Alban* the *Britiſh* Protomartyr, he went on Pilgrimage to *Rome*, *Adrian* the Firſt then Pope, to beg Indulgences and more than ordinary Priviledges for the intended work. He was kindly received, and got what he came for; and the next day going to ſee an *Engliſh* School, that had been ſet up at *Rome*, he for the maintenance of the poor *Engliſh* in that School, gave a Penny for every houſe, to be paid every year throughout his Dominion, (which was no leſs than three and twenty Shires at that time) only the Lands of S. *Alban* excepted. And this to be paid at the Feaſt of S. *Peter*, becauſe he found the body of the Martyr on that day, for which reaſon it was alſo called *S. Peter's Penny*. And although at laſt theſe *Peter-pence* were claim'd by the Pope as his own due and an Apoſtolical right, yet we find, that beſide the maintenance of a School here mentioned, for which they were firſt given, they have by other Kings been appropriated to other uſes. Thus we read that *Athelwolf* Father to King *Alured*, who was the firſt Monarch of this Iſle, granted three hundred

Marks (the ſumm total of the *Peter-pence* here, bating only an odd Noble) to be paid yearly at *Rome*. One hundred for the honour of S. *Peter*, to find Lights for his Church: another hundred for the honour of S. *Paul* on the like occaſion: and the third hundred for the Pope's uſe to enlarge his Alms. This was done in the year 858. when *Leo* the Fourth was Pope.

Lin. 9. *Thirty pence of live money.*] Poſſibly the worth or value of thirty pence in Goods and Chattels. King *Offa*, in his Grant thus words it, *quibus ſors tantum contulit extra domos in paſcuis, ut triginta argenteorum pretium excederet*; who had an Eſtate beſides Houſes in Lands, which might exceed the value of thirty ſilver pence.

Lin. 15. *Out of a Reſcript of Pope* Gregory.] We have the whole Letter ſet down in *Spelman*, which ſpeaks in *Engliſh* thus, *GREGORY the Biſhop, Servant of the Servants of God, to his Worſhipful Brethren the Arch-Biſhops of* Canterbury *and* York, *and to their Suffragans, and to his beloved Sons the Abbots, Priors, Arch-Deacons and their Officials, appointed throughout the Kingdom of* England, *unto whom theſe Letters ſhall come, Greeting and Apoſtolical Benediction. In what manner the Pence of S.* Peter, *which are due or owing to our Chamber, are to be gathered in* England, *and in what Biſhopricks and Dioceſes they are owing, that there may ariſe no doubt on this occaſion, we have cauſed it to be ſet down in this preſent Writing, according as it is contained in the Regiſter of the Apoſtolick See. Out of the Dioceſs of* Canterbury *ſeven pounds and eighteen ſhillings ſterling: Out of the Dioceſs of* London *ſixteen pounds, ten ſhillings.* And ſo of the reſt. *Teoven at the old City*, April 22. *in the ſecond year of our Popedom.* There is ſome difference though in the account of the Dioceſes. For after *Lincoln* he leaves out *Coventry* and puts *Chicheſter* for *Cheſter*, 8 *l.* and then after *Bath* he puts in *Salisbury* and *Coventry* (with a miſtake 10 *l.* 10 *s.* for 5 *s.*) and leaves *York* laſt. Beſides every body knows there are more Dioceſes now than were then. This was *Gregory* the Fifth that wrote this, and it was (our Author tells us) in the time of King *Edward* the Second. But *Edward* the Third in the year of the Lord 1365. and of his Reign 39. forbad theſe *Peter-pence* to be paid any more at *Rome*, or to be gathered any longer in *England*.

CHAP. XV.

Pag. 81. lin. 10. *Into ſix Provinces or* **Circuits.**] As they are for number ſtill, with two Judges a piece, though at firſt three. How theſe differ from what they now are, as to the Counties, the Reader may eaſily ſatisfie himſelf. Here are thirty ſeven of them, as we now reckon: only with this difference, that *Monmouth* and *Rutland* are left out, and *Richmond* and *Copland* are put in.

Pag. 82. lin. 27. *And if he periſh*, i. e. *ſink, let him loſe one foot.*] For that in this tryal by water, was the ſign and proof of guilt, if the party thrown in did not ſwim, which is quite contrary in the tryal of Witches: as you will find in the next Chapter, which treats of **Ordeals.**

Lin. 39. *The Kings great Aſſiſe.*] **Aſſiſe** is a word, that hath many ſignifications in our Law. It is here in the Title taken for a Statute; *The Aſſiſes* (*i. e.* the Statutes and Ordinances) *of King* Henry *made at Clarendon.* But in this place it is uſed for a Jury; and it is either the **Great** or *Grand Aſſiſe*, which ſerv'd for the right of Property, and was to

conſiſt

conſiſt of twelve Knights; or the *Petty Aſſiſe*, which ſerved for the right of Poſſeſſion only, and was made up of twelve lawful men.

CHAP. XVI.

Pag. 86. lin. 34. *The ſuperſtitions and fopperies.*] Theſe you have alſo in Sir *H. Spelman*, with an *Incipit Miſſa Judicii*, which ſhews that the Church of *Rome* did once approve of theſe Cuſtoms, which ſince ſhe hath condemned, notwithſtanding her pretence of being Infallible. I would to God, ſhe would deal as ingenuouſly in throwing off thoſe other errors and corruptions, we do ſo juſtly charge her with.

CHAP. XVII.

Pag. 87. lin. 21. Hogenhine.] Or Agen-hyne, that is, ones own ſervant. It is written alſo Home-hyne, that is, a ſervant of the houſe.

Lin. 33. *Holding in Frank Pledge.*] The *Latin* is *francum tenens*. Wherefore amend the miſtake, and read *holding in Frank Fee*. For *Frank Pledg* is a thing of another nature, as belonging to a mans Behaviour and not to his Tenure. Now *Frank Fee* is that which is free from all ſervice, when a man holds an Eſtate at the Common Law to himſelf and his heirs, and not by ſuch ſervice as is required in ancient demeſne.

Pag. 88. lin. 12. *The* Falcidian *Law.*] So named from one *Falcidius*, who being Tribune of the people in *Auguſtus* his time, was the Maker of this Law.

Lin. 33. *Twenty pounds worth of Land in yearly revenue.*] So I render 20. *librata terra*. For although *Cowell* in proportion to *Quadrantata*, or Fardingdeal of Land, which he ſaith is the fourth part of an Acre, ſeems at firſt to gather that *Obolata* then muſt be half an Acre, *Denariata* a whole Acre, and by conſequence *Solidata* twelve Acres, and *Librata* twenty times twelve, that is, two hundred and forty Acres: Yet this was but a conceit of his own. For by having found the word uſed with reference to Rent as well as Land, thus 20. *libratas terræ vel reditûs*, he is forced to acknowledge, that it muſt ſignifie ſo much Land as may yield twenty ſhillings *per annum*. To which opinion *Spelman* alſo gives his aſſent. But what quantity of Land this *Librata terra* is, cannot ſo eaſily be determined. *Cowell* out of *Skene* tells us, it contains four Oxgangs, and every Oxgang thirteen Acres: if ſo, then it is fifty two Acres, and twenty of them, which make a Knights fee, come to one thouſand and forty Acres, which ſomewhat exceeds the account here ſet down of ſix hundred and eighty out of the Red Book of the Exchequer. But there is a great deal of more difference ſtill, as the account of the Knights fee is given by others. In one Manuſcript we read, that *A Tardland contains twenty four Acres, four Tardlands make one Hide*, (that is, ninety ſix Acres), *and five Hides make a Knights fee*, (that is, four hundred and eighty Acres) *the Relief whereof is a hundred Shillings*. Another Manuſcript hath it thus, *Ten Acres according to ancient cuſtom make one Fardel, and four Fardels* (that is, forty Acres) *make a Tardland, and four Tardlands* (that is, one hundred and ſixty Acres) *make one Hide, and four Hides* (that is, ſix hun-

dred and forty Acres) *make one Knights fee.* A third reckons it otherwiſe, that *ſixteen Yard-lands make a whole Knights fee*; which if we make a Yard-land to be twenty four Acres (according to the firſt account) comes to three hundred eighty four Acres; but if (according to the ſecond) we take it for forty Acres, it amounts to ſix hundred and forty Acres. *And*, ſaith he, *when they are taxed at ſix Shillings four Pence* (that is, every of the ſixteen Yard-lands, which make up the Fee, at ſo much) *they make the ſumm of one hundred Shillings* (or five Pound, which was the ancient Relief of a Knights fee.) But this is a miſtake either of the Author or the Citation; it is ſix Shillings three Pence, which makes that juſt ſumm; from whence we learn alſo what proportion was obſerved by the Lord in ſetting and demanding of the Relief upon the next Heir after his Anceſtor's deceaſe. Further in the Kings Writ, as *Glanvil* cites it, it is ſaid, that twelve Plough-lands make one Knights fee: which, allowing to a Plough-land one hundred & twenty Acres, amounts to one thouſand four hundred and forty Acres. In the main, as to the value of a Knights fee, 'tis enough what *Cowell* tells us, that it was ſo much inheritance, as was ſufficient yearly to maintain a Knight with convenient Revenue, which in *Henry* the Thirds dayes, *Camden* ſayes, was fifteen Pounds, and Sir *Thomas Smith* rates at forty. But to confirm the account, which our Author here gives us, we find in the Statute for Knights in the firſt of *Edward* the Second, that ſuch as had twenty Pounds in Fee, or for term of life *per annum*, might be compelled to be Knights. And as to the various meaſure of Land (of which we have had a remarkable inſtance in this buſineſs before us) *Spelman* hath given us good reaſons for it; ſince where the Land was good, they might probably reckon the fewer Acres to a Yard land, a Hide, a Knights fee, *&c.* and where it was barren, they might allow the more. Beſide, that ſome Lords, who lett theſe Fees, might be more bountiful and profuſe, others more parſimonious and ſevere to their dependents; and that the ſervices which were impoſed upon theſe Fees, might in ſome Mannors according to cuſtom be lighter, in others upon agreement and covenant more heavy. All which might ſtrangely diverſifie the account, as to the quantity or meaſure of thoſe Lands, which were to make up a Knights fee.

CHAP. XVIII.

Pag. 91. lin. 4. *A little* **Habergeon** *or Coat of Ma[illegible]* In *Latin Halbergellum*, a diminutive from the *Saxon* **Halsberg**, armour for the Neck and Breaſt. It is written alſo *Haubergellum* and *Hambergellum*. They miſtake themſelves, who tranſlate it a *Halbert*, in *French Halebarde*, an offenſive Weapon, for a Coat of Mail, which is armour of defence, in *French Haubert* or *Hauberk*; whence **Fee de Haubert**, which we have already explained ſomewhere before.

Lin. 5. *A* **Capelet** *of Iron.*] A little Iron or Steel Cap inſtead of a Head-piece or Helmet, which the better ſort wore. For by comparing this with the two fore-going Sections, we find they were to have a difference of Arms according to their different Quality and Eſtate.

Lin. 7. *A* **Wambais.**] *Wambaſium* or *Wambaſia*, ſo called, I ſuppoſe, becauſe it reached over the belly or *womb*, was a Jacket or Coat of

of defence, uſed in ſtead of the Coat of Mail, perhaps like unto our Buff-coats, though probably not of Leather only, but of any other material, as the Wearer ſhould think fit.

Pag. 92. lin. 6. *Timber for the building of Ships.*] In *Latin* here, *Mairemia*; written alſo *Meremia* and *Meremium* and *Maremium* and *Muremium*, from the *French Mereſme*, Timber to build with.

Lin. 14. *Stercutius.*] *Saturn* ſo called, as being the firſt Inventer of dunging Land.

Lin. 28. *Under the title of Free-men.*] Here the Author himſelf hath in the *Latin* added a Marginal Note, which I thought fit to remove to this place. He ſaith, that among the ancient *Germans* the *Alway free*, the *Middlemoſt free*, and the *Lovermoſt free* were, as it were, the *Claſſes* and ſeveral Ranks of the leſſer Nobles, *i. e.* of their Gentry. For the title of Nobleſs (as alſo in our Vulgar Language) was given only to Princes and Great Men. And for this he quotes *Munſter. Coſmog. lib.* 3.

CHAP. XIX.

Pag. 93. l. 32. *In the borders of the* Carnutes.] A people of *France*, whoſe Countrey is called *Chartrain*, and their chief City *Chartres*, about eighteen Leagues from *Paris* Eaſtward. That Town eight Miles off, called *Dreux* (in *Latin Drocum*) was ſo named from the *Druids*, who dwelt there at firſt, and likely enough afterward often reſorted thither.

P. 94. l. 37. *Of the three Eſtates, the King, the Lords, and the Commons.*] There are indeed three Orders or Eſtates acknowledged by true Divines and ſound Lawyers in the *Engliſh* Government; to wit, the *Lords Spiritual*, the *Lords Temporal*, and the *Commons* of *England*. But the fundamental miſtake of our Learned Author is, that he hath joyned thoſe two ſorts of Lords (whoſe very character ſhews them to be of a diſtinct *ſpecies*, though as to the publick Welfare and the Kings Service they ought to be of one and the ſame intereſt) into one Eſtate, and to make up the third Eſtate, thought himſelf obliged to bring in the *King* himſelf for one, who is Lord paramount over all the three; and by this means *ipſam Majeſtatem in ordinem redigere*. I call this a fundamental miſtake, as a moſt probable ground of Rebellion (as it was in the Barons Wars, and in our late Civil Broils) inaſmuch as if the *King* make one of the three Eſtates, as they fancy he doth, and hath (as they do from thence conclude he hath no more) but a *co-ordinate* power with both or either of the other two Eſtates; that then it is lawful for both or either of thoſe Eſtates, in caſe of publick grievances to quarrel the King (their co-ordinate) if he will not give way to their redreſs; that is, if he will not conſent to do what they would have him to do; and upon his refuſal of ſo doing, to raiſe War againſt him, to ſequeſter and murder his Loyal adherents, to deſtroy his Royal Perſon; and finally, if he eſcape the hazards of Battel, when they get him into their hands, to bring him to account for a pretended male-adminiſtration, and the violation of a truſt, which God and not the People put into his hands; and having gone ſo far, that they may, if poſſible, ſecure themſelves, to put the Monarch to death, and to extirpate Monarchy it ſelf. This was the ground and method of our late *Republican* policy

policy and practice. Wherein yet they did not foreſee what examples they ſet againſt themſelves, ſuppoſing this Doctrine of the *three Eſtates* in their ſenſe to be true, and that *King*, *Lords* and *Commons* had an equality of truſt and parity of power, that the ſame outrage, which the *Rump-Commoners* acted againſt the King, to the deſtroying of him, and againſt the *Lords*, to the outing of them, and voting them uſeleſs and dangerous (as to their ſhare of Government) might one time or other be more plauſibly promoted, and more effectually put in execution by one or both of the other two *Eſtates*, with the help and aſſiſtance of great numbers of the *Commoners* (as there ever will be in ſuch National diviſions) againſt themſelves and all men whatever of ſuch pernicious and deſtructive principles. No. This falſe Doctrine, I hope, will never obtain among us; and our *Engliſh Government* is ſo well conſtituted, that our *Lords Spiritual* and *Temporal* and our worthy *Commoners*, will find it the intereſt of themſelves and their poſterities, that they will ever have that duty and deference to our *Soveraign*, as may ſecure Him and Us, and diſcourage the deſigns, and defeat the attempts of all ſuch as wiſh ill to his honour and ſafety, or to the publick peace. Beſides, is it rational to imagine, that the *King*, whoſe abſolute right by Law it is, to convene the *Eſtates*, when and where he thinks fit, to call and diſſolve *Parliaments*, as he pleaſes: in a word, that He, in whoſe Name all *Juſtice* is adminiſtred, in whoſe Hands the *Militia* is, and by whoſe Authority alone the Subjects can take up *Arms*, ſhould ſtand only in a *Co-ordination* of power with any other perſons whatſoever or however aſſembled or aſſociated within his Dominions? This flaw I could not but take notice of in our Great Author, and that only with an intention to undeceive the unwary Reader, and not to reflect upon his Memory, who though he kept along a great while with the *Long Parliament*, yet never appeared in action for them, that ever I heard, much leſs uſed or owned that virulence and violence, which many others of that ill Body of men judged neceſſary for their proceedings.

CHAP. XX.

Pag. 96. lin. 15. *Alderman of England.*] The word **Alderman**, in *Saxon*, **Ealdorman**, hath various acceptions, ſo as to ſignifie all ſorts almoſt of Governours and Magiſtrates. So *Matth.* 20. 25. *the Princes of the Gentiles*, in the *Saxon* tranſlation are called **Ealdormen**; and *Holofernes*, I remember, the General of the *Aſſyrian* Army, is in an *Old Engliſh* Tranſlation called the **Alderman** *of the Army*. So *Æthelſtan* (whoſe younger Son this *Ailwin* was) being Duke or Captain General of the *Eaſt-Saxons* is in this Book of *Ramſey* ſtyled *Alderman*. The moſt proper importance of the word bears up with the *Latin Senator*, *i. e.* Parliament-man; as the Laws of S. *Edward* make out. "In like "manner, ſay they, heretofore among the *Britons*, in the times of the "*Romans*, in this Kingdom of *Britanny* they were called *Senators*, who "afterwards in the times of the *Saxons* were called *Aldermen*; not ſo "much in reſpect of their Age, as by reaſon of their Wiſdom and "Dignity, in that ſome of them were but young men, yet were skil-"led in the Law, and beſide that, were experienced perſons. Now that *Alderman of England*, as *Ailwin* here was, had to do in affairs of Juſtice,

Juſtice, appears by the foreſaid Book of *Ramſey*, where it is ſaid, that *Ailwin* the Alderman and *Ædric* the Kings Provoſt ſate Judges in a certain Court. The *Alderman of the County* our Author makes to be the ſame as the Earl or Lord of the County, and *Spelman* ſaith, it is hard to diſtinguiſh, but at length placeth him in the middle betwixt the Count and Viſcount. He and the Biſhop kept Court together, the one for Temporals, the other for Spirituals. The Title goes lower ſtill, to denote a Mayor or Bailiff of a Corporation, a Bailiff of a Hundred, *&c.*

Lin. 30. **Healf-koning.**] It was an overſight or ſlip of memory in our Author, to ſay, that *Ailwin* was ſo called; when the Book of *Ramſey* tells us, it was his Father *Æthelſtan*, who was of that great power and diligence, that all the buſineſs of the Kingdom went through his hands, and was managed as he pleaſed, that had that Nick name given him therefore.

Lin. 36. *The* **Gzabes.**] Our Author makes them ſubordinate to the *Aldermen* of Counties: but in the Laws of the *Confeſſor* they appear to be muchwhat the ſame. There we read, "And as they are now "called **Gzebes**, who are put in places of Rule over others, ſo they "were anciently among the *Engliſh* called *Ealdermen*. Indeed, the word **Gzebe** or **Reeb** (for it is all one) is of as various uſe, as that other of *Alderman* is. In *Saxon* it is **gereſa**, from **gerefen** and **reaſen**, to take or carry away, to exact or gather. Whence this Officer (*Graphio* or *Gravius* from the *Saxon*) is in other *Latin* called *Exactor regius*; and by reaſon that the *Sheriff* gathered the Kings Fines and other Duties, and returned them to the Exchequer, he was called the **Shire-grebe** or **Shire-reeb**, that is, the Gatherer of the County. But the truth is, that **Gzebe** or **Reeb** came at laſt in general to ſignifie any Ruler or Governour ſet over any place almoſt whatever; as the ſame word **Gzabe** doth among the *Dutch*. So a **Shire-grebe**, or **hibgereſa**, the High Sheriff of a County; a **Port-grebe**, the Governour of a City or Port. So the Lord Mayor of *London* was called formerly. **Tun-grebe**, the Bailiff of a Town or Mannor. Sometime **Gzebe** is taken for a Count or Earl, as *Alderman* is.

CHAP. XXI.

Pag. 98. lin. 22. *For Toll and Gabell.*] In the *Latin pro theolonio & gablo.* Now *telonium*, from the *Greek* τελώνης, properly ſignifies the place where the Officers of the Cuſtoms receive the Kings duties; but is uſed alſo for a duty paid for the maintenance of Bridges and River-Banks. So *Hotoman*. But in our Law it is taken for the **Toll** of a Market or Fair. And *Gablum* or *Gabellum*, a **Gabell**, from the *Saxon* **gafol** or **gafel**, ſignifies any Impoſt upon Goods; as that in *France*, upon Salt, *&c.* alſo Tribute, Cuſtom, any kind of Tax or Payment, *&c.*

Lin. 32. *Through the Streets of* Coventry.] There is a famous Tradition among the people of that Town concerning this matter, that the Lady being to ride naked, only covered all over with her hair, had given order for the more decent performance of her Proceſſion, that all the Inhabitants ſhould that day keep their Shops and Doors and Windows ſhut. But that two men tempted by their Curioſity to do what fools are wont to do, had ſome ſuch penalty, I know not what it was, inflicted upon them, as *Actæon* had for the like offence.

And

And they now ſtand in ſome publick place cut out of Wood or Stone, to be ſhewn to any ſtranger that comes thither, like the Sign of the *Two Logger-heads*, with the ſame Motto belike, *Nous ſommes trois.*

Pag. 99. lin. 7. *Brought in my Court a certain* **Toper.**] In the *Latin*, *attulit in curiâ meâ quandam* **Toper.** I know what the adverb *Toper* ſignifies among the ancient *Latines*; but what the word means here, I confeſs, I am in the dark. It doth certainly ſtand for ſome thing (I was thinking a **Taper**) which he brought with him into Court, and ſware upon it, as he ſhould have done upon the holy Goſpels. I cannot imagine, that by *quandam* **Toper**, ſhould be intended ſome Woman or Girl, whoſe Name was **Toper**, whom he brought along with him, and in defiance to the Court, laying his hand upon her, took his Oath as formally, as if he had done it upon the holy Evangeliſts.

Reader,

Reader,

ONe thing I forgot to acquaint thee with in the Preface, that, whereas the Author himself had divided each Book into several Sections, which were very unequal and incommodious, I thought it much more convenient for thy ease and profit, to distribute them into Chapters; together with the Argument or Contents of each Chapter at the beginning; and withal, that no one may complain, that I have injured the Author, by altering his Method, I have left his Sections also marked with a Numeral Note 1, 2, 3, &c. on the side of the inner or outer Margin.

FINIS.

ERRATA.

IN the *Tranſlator's* Preface, p. 4. l. 15. r. (*and hath that of crabbed in it beſide*) *and as to the method is ſo intricate.*

Pag. 11. l. 2. r. *and ſtrifes:* p. 14. l. 50. r. *Pieces:* p. 17. l. 41. r. *Borderers:* p. 20. l. 16. for **facts**, r. **toils:** p. 21. l. 24. r. *and Money:* p. 30. l. 16, r. **Lazzes:** p. 31. l. 28. r. **and Breeding:** p. 34. l. 14. r. *peccatum:* l. 40. r. **of his eyes:** p. 35. l. 2. r. *Quid:* p. 43. l. 7. r. *ſorry old Verſe:* p. 49. l. 48. r. *too truly:* p. 56. l. 6. r. *Warden:* p. 61. l. 13. r. *Vulgar:* l. 21. r. *beſtowing her:* p. 62. l. 25. r. *miſdemeanour:* p. 65. l. 11. r. *add:* p. 72. l. 43. r. *ſeaſonably:* p. 74. l. 5. r. *Gloceſter. Whom:* p. 85. l. 14. r. *ſtrict:* p. 86. l. 26. r. *that in the:* p. 87. l. 5. r. *What. Of him:* p. 91. l. 17. r. *him:* p. 92. l. 32. r. *Cattle:* p. 96. l. 34. r. *turned:* p. 108. l. 33. r. *retired:* p. 110. l. 8. r. *Neptune, as:* p. 112. l. 34. r. *unknown:* p. 113. l. 34. r. **Inlagh:** p. 116. l. 18. r. *three things:* p. 117. l. 47. r. *found:* p. 122. l. 6. r. **arretted:** p. 123. l. 9. r. *quilleted.*

FINIS.

ENGLAND'S
EPINOMIS.

BY

JOHN SELDEN, Esquire.

LONDON,

Printed for *Thomas Basset* at the *George* in *Fleetstreet*, and *Richard Chiswell* at the *Rose* and *Crown* in S. *Paul's* Church-Yard. MDCLXXXIII.

TO THE READER.

THIS *Appendix* or Addition to what had been formerly collected by others, of our ancient Conſtitutions, needs no farther Recommendation, than the great Name and Learning of the Author: It was an Eſſay of his younger years, and one of the fruits of his firſt and earlieſt Inquiries. The Reader will here meet with the true Original (as well under the *Roman*, as the *Saxon* and *Norman* Governments) of ſeveral of our Laws which are now in force, and the Miſtakes in *Polydore* and others, diſcovered: The famous Conſtitutions of *Clarendon* (ſo much oppoſed by *Becket*) faithfully recited, and purged from the Errors which had crept into thoſe Copies formerly publiſhed: An account of the *Magna Charta* of King *John*, and the differences between *it* and *that* granted by his Son *H.* 3. which we

have in the Fore-front of our Printed Statutes: A Correction of our printed *Charta de Foreſta*; with other Curious and Judicious Remarks upon theſe Subjects, not heretofore extant; which it is not doubted will for their own ſake, as well as their Authors, find a welcome Reception from all knowing Perſons, eſpecially from the Learned Profeſſors of our *Engliſh* Laws.

THE

THE CONTENTS.

CHAP. I.

From the first supposed Inhabitants and Britains, until Julius Cæsar, Page 1.

CHAP. II.

Out of Roman Histories from Julius Cæsar, to the period of Rome's Empire in this Land, p. 4

CHAP. III.

The Saxons Customs and Laws (except what is in Lambard's Archæonomy) during their Government, until the Normans, p. 8

CHAP. IV.

William the First: But none of that which under Title of his Laws, is in Lambard, p. 12

CHAP.

CHAP. V.

What was received under William le Rous, p. 15

CHAP. IV.

Henry Beauclerc *reſtored, and invented common Liberties,* p. 16

CHAP. VII.

Stephen *of* Blois, p. 19

CHAP. VIII.

Henry Fitz-L'empres, *and his* Clarendon *Conſtitutions reſtored to themſelves, and purged from the faults wherewith they have been publiſhed,* p. 20

Aſſiſæ Henrici Regis factæ apud Clarendon & renovatæ apud Northamtune, p. 26

CHAP. IX.

Richard Ceur de Lion, p. 29

Forma Procedendi in Placitis Coronæ Regis, ibid.

Capitula Placitorum Coronæ Regis, ibid.

Capitula Placitorum Coronæ D. Regis, p. 32

Hæc

Hæc eſt aſſiſa D. Regis, & hæc ſunt præcepta de Foreſtis ſuis in Anglia facta per aſſenſum & concilium Archiepiſc. Epiſc. & Abbat. Comit. & Bar. & Militum totius Regni, p. 33

CHAP. X.

King John *and his Grand Charter,* p. 35

Conſuetudines Scaccarii ſuper Debitis Domini Regis inquirendis, ibid.

The Contents.

P. 33

CHAP. X.

King John and his Grand Charter, P. 37.

Confirmations Sundry after Divers Bounds Kept in perpetuity, ibid.

England's Epinomis.

CHAP. I.

From the firſt ſuppoſed Inhabitants and Britains *until* Julius Cæſar.

IF all publiſhed Authority were a legitimate Brother to Truth's certainty, then could I affirm, that their common Father, old Time, once ſaw a *Samothean* race in this Iſle of *Britany*. The *Italian*-bred-*Chaldee Beroſus* mentions one *Samothes*, Brother to *Gomer* and *Tubal*, of *Japhet*'s line, to be Author of the *Celtes*, which inhabited (with other parts of *Europe*) that of *Gaule*, which we now call *la France*: and his Commentator *Annius de Viterbo* thus addeth, *Samothes fuit frater Gomeri atque Tubalis ex Japete patre, à quo primùm Britones, inde Galli, Samothei dicti fuerunt: & præcipuè Philoſophi & Theologi Sectatores ejus.* Theſe *Samotheans*, by the teſtimony of *Ariſtotle* and *Scion*, *divini atque humani juris peritiſſimi, & ob id religioni deditiſſimi, & propterea Samothei* (rather *Semnothei*) *appellati*, under the providence of theſe and their race was the Law-government of the State, until that *Trojan* celebrated branch, *Brute*, entred the Iſle: who compoſed a Book intituled *Leges Britonum*, collected out of the *Trojan* Laws. But to ruminate a little upon that *Saturnian* Age, and omit all Shadow-fights touching controverted *Brute* (his ſuppoſed exiſtence and fortunes) it may be not without good reaſon doubted, whether any ſuch Laws of *Troy* were, out of which others might be extracted. Nor will they peradventure upon examination (excepted only ſome Cuſtoms of Religious Rites) appear more certain in particular, or more true in general, than thoſe of *Ariſtophanes* his *Nephelococcygia*. Times ſo near the Golden Age (when as

V. Sr. *W. Raleigh fol.* 118.

Beroſ. antiq. Chald. lib. 5. & ad eum Annius de Viterbo.

Diog. Laert. in vita Philoſop. lib. 1. & vide Baſingſtocke hiſt. lib. 1. Flor. hiſt. ærat. 3. hiſt. pag. 18.

Georgic. 1. *Nec ſignare quidem, aut partiri limite campum———*

Senec. Epiſt. 91. *Nec cuiquam* (as *Seneca* hath it) *aut animus aut injuria aut cauſa*) have left few notes of expreſly binding Laws, the main Government conſiſting in the arbitrary diſpoſition of thoſe, in whom being choſen as Princes for their eminency in Juſtice, and conſequently in all other Vertues (as *Deioces* was of the *Medes*) it was rather an Office, than a Title of Dignity, to undergo the ſtyle of Monarch. And although it be reported in *Plato*, That *Talus* ('twixt whom and *Rhadamanth*, the *Cretique* Juſtice was by *Minos*, *Jupiters* own Son, then King of *Crete*, divided) thrice every year did make his Circuit, for maintenance of ſuch Laws, as were eſtabliſhed, and in Brazen Tables regiſtred; one of which (ſomewhat to particularize) was an Edict againſt Drunkenneſs in merry meetings; ſo that Conſtitutions in written Tables may thus derive their pedigree from the moſt ancient remembrance of *Grecian* diſcoveries (*Ceres* and her *Theſmophoria*, with all ſuch like omitted) yet upon that common Epithet of *Agamemnon* in *Homer*, which ſaluteth him Ποιμένα Λαῶν, *i. e.* Shepherd of the people, where the phraſe of *Jove*'s free gift to Princes and Judges of

Herodot. l. 1. Officium erat imperatis, non Regnum, Seneca. Plat. in Minoe.

Iliad α'. & ſæpius alibi. ——— Σκῆπτρον τ' ἠδὲ θέμιστας.

Joſeph. contra Appion. lib. 2. Plutarch. in lib. de Homero. Ὅσσα ῥ. & Heſiod. in Theolog. Æneid. 5. & 7. is very frequent, the word Νόμος, *lex*, being long ſince obſerved not only to be not found in any of his works, but alſo to have been of later birth than his Age permitted, (unleſs the contingency, which Εὐνομία, coming from the ſame Theme, both by him and *Heſiod* remembred, hath with it, perſwade the contrary, and upon the ordinary phraſes in *Virgil* of *Jura vocatis dare populis*, and ſuch like, applied to *Trojan* Princes) we may with probability enough conjecture that their Laws, being, as the *Platoniſts* term it, *ſecundæ Veneris*, were alwayes cloſely folded, rather within the treaſury of his breaſt, which was only therefore greater than other, becauſe he ſeemed beſt of them all, than publiſhed in enduring Tables, to be obſerved as dumb Magiſtrates; *Et quidem initio Civitatis* (ſaith *Pompinus*) *populus ſine certâ lege, ſine certo jure agere inſtituit, omniaque manu Regis gubernabantur.* But from this digreſſion into the way again.

Summa fœlicitas erat gentium in quibus non poterat potentior eſſe niſi melior. Senec. Epiſt. 91. L. 2. ff. orig. juris.

One of this Succeſſion *Dunvallo Molmutius*, inſtituted (as they write) *ut aratra, templa viæque ad Civitates ducentes immunitate confugii gauderent. Verum quia ſuccedente tempore de viis* (*cum non eſſent certis limitibus diſtincta*) *orta eſſet diſſenſio, Belinus Rex filius prædicti Molmutii, ad ſubducendum omne ambiguum, Quatuor regales vias, omni privilegio munitas, per Inſulam ſterni fecit: Foſſam ſcilicet, Watling ſtreete, Erming-ſtreete & Ikenild-ſtreete*; which rather (by *Camden*'s Judgement) were the *Romans* works, as out of *Tacitus*, *Beda*, and other Teſtimony he collecteth. *Hic leges* (meaning *Dunvallo*) ſaith *Jeoffrey* of *Monmouth*) *quæ Molmutinæ dicebantur, inter Britones ſtatuit, quæ uſque ad hoc tempus inter Anglos celebrantur. Statuit ſiquidem inter cætera, quæ multo poſt tempore beatus* * *Gildas ſcripſit, ut templa Deorum & Civitates talem dignitatem haberent, ut quicunque Fugitivus ſive reus, ad ea confugeret, veniam coram inimico ſuo haberet. Statuit etiam ut viæ, quæ ad prædicta templa & Civitates ducebant, necnon & aratra colonorum,*

Ranulph. Ceſtren. in polychronico. Galfred. Monumeth. lib. 1. cap. 16. & Matth. Weſtmonaſt. fo. 52. Camden in Rom. in Brit.

* V. Spelmans Gloſſ. del ley Molmutii, tit. Lex. 441.

eadem

eadem lege confirmarentur. Of the Gynæcocracy of *Martia*, Wife to King *Guinthelin*, a Woman very learned, thus ſpeaks the ſame Author; *Inter multa & inaudita, quæ proprio ingenio invenerat, invenit legem, quam Britones Martianam vocaverunt. Hanc etiam Rex Aluredus inter cæteras tranſtulit, quam Saxonicâ linguâ Marchenlage vocavit*; which name by our great *Engliſh* Antiquary, is rather deduced from the *Mercii*, whoſe limits (mearc in *Saxon* ſignifying a limit) adjoyned in ſome part to all the other Kingdoms of the *Germans* here eſtabliſhed; and they thence ſo denominated. I could wiſh for a ſight of *Jupiter*'s *Diphtere*, or an Oracle from *Apollo*, that ſo, reſolution might be had touching the certainty of theſe reports, whether fabulous, or ſealed with the ſtamp of a true Hiſtory. The main Authors are that *Chaldee* Prieſt and the *Arthurian Jeoffrey*; both exceedingly ſuſpected, but eſpecially the firſt, by the penetrating Judgements of moſt learned men. But admitting them, as your Mercurial Spirit ſhall move you, you have a fair paſſage from theſe Mythick reports, ſelected out of Bardiſh Hymns, unto moſt allowed truths of authentick Hiſtorians.

Galfred. Monumeth. lib. 1. cap. 20. & Flor. hiſtor. pag. 56.

Camden in append. ad Cornavios.

CHAP. II.

Out of Roman *Hiſtories from* Julius Cæſar *to the period of* Rome's *Empire in this Land.*

JULIUS CÆSAR (who firſt of the *Romans* ſet foot in this little World divided from the greater) diſcovered among the *Gauls* their order of Government, and form of deciding controverſies by Law: which was wholly the office of the *Druides*, then being (as it ſeems) the *Togata Militia* of the State. Their Diſcipline, he affirms, was firſt found in this Iſle, and hence transferred to the old *Gauls*: They hither always ſent their youth, as to a Seminary of that Learning.

Cæſ. de bello Gall. lib. 6. & Strabo, lib. 4. Geograph.

I. *Illi rebus divinis* (*Cæſar*'s words) *interſunt, ſacrificia publica ac privata procurant, religiones interpretantur.*

II. *De omnibus controverſiis publicis privatiſque conſtituunt*, (the pontifical Colledge of old *Rome*, after the Twelve Tables received, did as much) *& ſi quod eſt admiſſum facinus, ſi cædes facta, ſi de hæreditate, de finibus controverſia eſt, iidem decernunt, præmia pœnaſque conſtituunt.*

L. 2. ff. de Orig. juris.

III. *Si quis privatus, aut populus, eorum decreto non ſtetit, ſacrificiis interdicunt: hæc pœna* (yet it was but like the *minor excommunicatio* uſed in the Chriſtian Church) *apud eos eſt graviſſima.*

IV. *Quibus ita eſt interdictum, ii numero impiorum ac ſceleratorum habentur; ab iis omnes decedunt, aditum eorum ſermonemque defugiunt* (theſe conſequents make it as the greater Excommunication) *ne quid ex contagione incommodi accipiant: neque iis petentibus jus redditur* (the ſelf ſame in proportion remains yet with us in practice) *neque honos ullus communicatur.*

Juxta item lex civilis & Canonica. Extra de excepr. c. except (de ſacroſanct. Eccleſ.) li. placet.

V. *Druidibus præeſt unus, qui ſummam inter eos habet authoritatem.*

VI. *Hoc mortuo, ſi quis ex reliquis excellit dignitate, ſuccedit; ac ſi ſint pares plures, ſuffragio adlegitur.*

VII. *Druides à bello abeſſe conſueverunt, neque tributa una cum reliquis pendunt* (our Clergy in effect hath retained as much) *Militiæ vacationem omniumque rerum habent immunitatem.*

VIII. Such large Priviledges occaſioned increaſe of their Scholars, *Qui magnum* (ſaith he) *numerum verſuum ediſcere dicuntur. Itaque nonnulli annos vicenos in diſciplinâ permanent, neque fas eſſe exiſtimant ea literis mandare, cum in reliquis ferè rebus publicis privatiſque rationibus, Græcis literis utantur.* Hence ſome infer that the Tongue of the old *Gauls* was *Greek*, but clearly that the *Druides* wrote in it: I am not perſwaded to either. *Græca litera* is not always *Latine* for the *Greek* Tongue; So might we ſay, that the *Syriack* Teſtament were perfect *Hebrew*, becauſe *Literis Hebraicis exaratur.* As for inſtruments of commerce written at *Marſile*, ἑλληνιϛὶ (as *Strabo* reporteth) it proves only that a *Greek* Colony (for it was from the *Phocians*) uſed *Greek*. But *Cæſar* alſo ſpeaks of Tables found in the *Helvetians* Tents, *Græcis literis exaratas.* We may interpret both for the Character only, which perhaps even the *Græcians* thence borrowed. Of this place of the *Druides* it is the cenſure

Strabo, lib. 4. Geograph.

Cæſar de bell. Gall. lib. 1.

ſure of a great Doctor, the Learned *Hotoman*, that *Græcis* hath crept in through fault of Tranſcribers; *Humeris* did in another place in the ſame *Cæſar* ſo thruſt it ſelf unto *Dextris*, as *Lipſius* makes apparent; who is clear of opinion that the whole context of his Commentaries hath ſuffered much alteration and ſpoil by *Julius Cæſar* his interpolation; Nay ſome think they were never ſince the firſt Copy his own. But to prove with a forcible Argument, think you that Greek was ſo familiar with the *Druides?* Why then did *Cæſar* write in Greek to *Cicero*, to this end, that neither the Carrier, being a Gaulenor, nor other of the State, if they were intercepted, might underſtand them? to whoſe hands in time of War ſhould they have come ſooner, than to the Councils, where the *Druides* were chief? So much not amiſs, becauſe it touches the tongue of the Lawyers, uſed in thoſe times.

Hotoman in *Francog.* cap. 2. Abſolvent te Lectori ſi conſulas, Aldus Manutius ad lib. 6. Cæſaris, Horomannus in Francogalia, Paulus Merula in Coſmogr. part. 2. lib. 3. cap. 15. & de cæteris, quæ hic ad Cæſarem, juſtus Lipſius in Comm. ad Tacit. Hiſt. lib. 1. ſect. 100. & in quæſt. Epiſtolic. lib. 2. cap. Electi, lib. 2. cap. 7.

Cæſar de Bell. Gall. lib. 5.

To the former *Druidian* Orders and Conſtitutions are added in *Pliny*, *Strabo*, *Marcellinus*, *Lucan*, *Tacitus*, and others, divers Rites of Religion and Philoſophy, which taſte much of *Pythagorean* doctrine, worthy of obſervation, and applicable as well to this Iſle, as any part of *Gaul*. For as much as not only the Infancy of that Sect had here its nurture, but alſo an identity of Common-wealth, Order, Language and Religion, between the old *Gauls*, and our *Britains*, is by learned *Camden* with ſufficient reaſons of ſtrong proof, in his excellent Chorography of this Country, declared. Fit enough therefore is it to conjoyn alſo the Municipals of the *Gauls*, which by the ſame authority were ſcarce different from the *Britiſh*.

In Prim. Incol.

IX. *Suos liberos niſi cum adoleverint, ut manus militiæ ſuſtinere poſſint, palàm ad ſe adire non patiuntur.*

X. *Viri quantas pecunias ab uxoribus dotis nomine acceperunt, tantas ex ſuis bonis, æſtimatione factâ, cum dotibus communicant; hujus omnis pecuniæ conjunctim ratio habetur, fructuſque ſervantur; uter eorum vitâ ſuperaverit, ad eum pars utriuſque cum fructibus ſuperiorum temporum pervenit.*

Bodin. lib. 1 de rep. ca. 4. Juſt. inſtit. tit. de patriâ poteſtate.

XI. *Viri in uxores, ſicuti in liberos, vitæ neciſque habent poteſtatem*; Here *John Bodin* blames *Juſtinian* for confining this power only to the *Romans*.

XII. *Cum paterfamilias illuſtriore loco natus deceſſit, ejus propinqui conveniunt, & de morte, ſi res in ſuſpicionem venit, de uxoribus in ſervilem modum quæſtionem habent; & ſi compertum eſt, igni* (for a Woman to kill her Husband is now petit-Treaſon; and ſhe ſuffers pains of death by fire) *atque omnibus tormentis extruciatas interficiunt.*

XIII. *Servi & Clientes quos ab iis dilectos eſſe conſtabat, juſtis funeribus confectis, unà cremabantur.*

XIV. *Sanctum ſi quis quid de rep. à finitimis rumore aut famâ acceperit, uti ad magiſtratum deferat, neve cum quo alio communicet.*

XV. *Magiſtratus, quæ viſa ſunt, occultant, quæque eſſe ex uſu judicaverint, multitudini produnt.*

XVI. *De republ. niſi per Concilium loqui non conceditur.*

XVII. *Plerique cum aut ære alieno, aut magnitudine Tributorum, aut injuriâ potentiorum premuntur, ſeſe in ſervitutem dicunt Nobilibus: In hos eadem ſunt jura, quæ dominis in ſervos.*

Inde *Wapintach.*

XVIII. *Armati, ita mos gentis erat*, ſaith *Livy*, *in Concilium venerunt.*

Liv. lib. 31.

XIX. In

Plutarch. lib. de virtut. Mul. *Women's rule.* Tacit. in vitâ Jul. Agricolæ & vide Ariſtot. Polit. lib. 2. cap. 7.

XIX. In reſpect of quiet compoſition of ſeditious tumults among themſelves, made by interceſſion of their weaker Sex, a cuſtome grew among them (*Plutarch* is my Author) that Women alſo had prerogative in deliberative Seſſions, touching either Peace-government or Martial affairs, and *Sexum* (ſaith *Tacitus* of the *Britains*) *in imperiis non diſcernunt.*

But *Cæſar* is not without ſomething, which expreſly is attributed to our ancient *Britains.*

Cæſar, lib. 5. de bell. gall. *Stony.*

XX. *Utuntur numero æreo aut annulis* (ſome read *laminis*) *ferreis, ad certum pondus examinatis.*

Cambd. 29.

XXI. *Leporem & Gallinam & Anſerem guſtare fas non putant; hæc tamen alunt animi voluptatiſque causâ.*

Timon apud Athen. lib. 12. & 13. Dipnoſophiſt.

XXII. *Uxores habent Deni* (no more diſparagement be it to them, than the indiſtinct and open carnal Congreſſe reported of the *Thuſcans*, the beſt part of the old *Italians*, or that of the *Athenians* before the Cecropian alteration) *duodenique inter ſe communes, & maximè fratres cum fratribus, & parentes cum liberis; ſed ſi qui ſunt ex his nati, eorum habentur liberi, à quibus primùm virgines quæque ductæ ſunt.*

Howſoever *Julius* his impoſed Tributes did in ſome degree diminiſh their publick liberty; yet that under him, *Octavian*, *Tiberius*, and *Caligula*, they were, in reſpect of any State-innovation, ATTONOMOI, i. e. uſing their own Laws, is collected out of *Dio's Roman* Hiſtory. He ſpeaking of *Plautius* (Lieutenant here to the Emperour *Claudius*) his victorious ſucceſs againſt *Togodunus* and *Caractacus*, affirms their ancient Ariſtocracy, without ſubjection to ſtrangers, as yet continuing: Ἦσαν δὲ (ſaith he) οὐκ ἀνύβριστοι ἀλλ' ἄλλοις βασιλεῦσι προσαγόμενοι. *i. e.* They were not free to live at pleaſure of the multitude (not free from ſuperiour Government) but ſubject to divers Kings, ſo that until that time continuing their plurality of narrow territoried Princes, they were truly free from all foreign impoſition of Laws; which is expreſly affirmed in that of *Seneca* the Tragedian, ſpeaking thus of *Claudius*, in the Perſon of *Octavia* his Daughter.

Dio Caſs. hiſt. Rom. lib. 60.

Senec. in Octa. act. 1.

Cuique Britanni terga dedere
Ducibus noſtris ante ignoti
Juriſque ſui.

But in his time their times changed, a good part of the Iſle conquered, and into a preſidial Province reduced. *Colonia* (ſo ſpeaks *Tacitus*) *Camalodunum* (which was *Cunobelinus's* Palace or Town-royal, now *Malden* in *Eſſex*) *valida veteranorum manu deducitur, in agros captivos ſubſidium adverſus rebelles, & imbuendis ſociis ad officia legum*; The Verulanian Municipy, celebrated by our noble *Spenſer*, and remembred by *Tacitus*, the chief ſeat of *Caſſibellan*, near S. *Albans* in *Hartfordſhire.* The *Roman* Colonies at *York*, at *Cheſter*, (as by an Inſcription of an old Coin *Camden* teſtifieth) at *Gloceſter* (proved out of an old ſtone in *Bath*-Walls by the North-gate there thus charged, DEC. COLONIÆ GLEV. VIXIT LXXXVI) compared with *Claudius* his former recited, are great Teſtimonies of a great alteration. For although *Muni-*

Tacit. annal. lib. 12. Dio Caſs. lib. 60.
Colonia hæc Victireenſis dicta in antiqua Inſcript. apud Lip. & Camdenum.
Spenſ. in ruinis Temporum.
Tacit. annal. lib. 14.
Camden in Cornaviis, Dovunis, Brigantibus.

nicipes (as *Agellius* hath it) *ſunt Cives Romani ex Municipiis, ſuo jure & legibus utentes, muneris tantùm cum Pop. Rom. honorarii participes*, yet *Coloniarum alia*, ſaith he, *neceſſitudo eſt ex Civitate quaſi propagatæ ſunt, & jura inſtitutaque omnia Pop. Rom. non ſui arbitrii habent.* Both, as well Municipies as Colonies, had their *Decuriones, Duumviros, Ædiles, Equites*, and ſuch like Orders, and Offices different from all Places where the *Romans* as yet had not ſeated their Empire. Under ſome of the ſucceeding Emperors, *Veſpaſian, Titus* and *Domitian*, was *Julius Agricola*, Father-in-Law to *Tacitus*, here *Roman* Lieutenant: through whoſe perſwaſion to civility, *Habitus* (writeth the ſame *Tacitus* among the *Britains*) *noſtri honor, & frequens toga.* The ſomewhat younger times alſo ſaw *Papinian*, that Oracle of the *Roman* Laws, diſcuſſing at *York*, as, out of *Forcatulus*, *Camden* hath noted.

Agell. Noct. Attic. lib. 16. cap. 13.

Camden in Brigantibus.

When *Commodus* had the Empire, then was *Britain*'s King *Lucius* (of Kings the firſt Chriſtian) who after the receipt of that holy token of regeneration, from *Eleutherius* Biſhop of *Rome*, made a ſecond demand, which by the Pope's returned anſwer you ſhall the better underſtand: *Petiſtis* (ſo was his reſcript, and,

Lambard in Archænom.

Juraque ab hâc terrâ, cætera terra petet,

Ovid. 1. Faſt.

was *Ovid*'s prophecy) *à nobis leges Romanas & Cæſaris, vobis tranſmitti, quibus in regno Britanniæ uti voluiſtis. Leges Romanas & Cæſaris enim nuper miſeratione Divinâ in regno Britanniæ, & fidem Chriſti habetis penes vos in regno, utramque paginam: Ex illis Dei gratiâ, per concilium regni veſtri ſume legem, & per illam Dei patientiâ veſtrum reges Britanniæ regnum; vicarius verò Dei eſtis in regno.* What the ſequel hereof was, thus only appears: that after he had in lieu of the Archflamens at *London, York* and *Caer-leon*, conſtituted three Archbiſhops, with twenty-eight Biſhops in other places, making large Gifts of Poſſeſſions to their Churches, *Eccleſias* (*Matthew* the Monk of *Weſtminſter* ſpeaks it) *cum ſuis cæmeteriis* (if we may believe that then there were with us Church-Yards for Burials) *ita conſtituit eſſe liberas, ut quicunque malefactor ad illa confugeret, illæſus ab omnibus remaneret*, with which the *Britiſh* Conſtitutions and Cuſtoms have here their laſt limit.

Galfred. Monumeth. lib. 2. cap. 2.

CHAP.

CHAP. III.

The Saxon *Cuſtomes and Laws (except what is in* Lambard's *Archæonomy) during their Government, until the* Normans.

ITALY had at length ſo much to do in defence of her ſelf, that ſhe could hardly afford help to others. *Gothick* incurſions grew ſo violent and dangerous, the *Picts* and *Scots* were as troubleſome to the *Britains*, who deſiring aid of the *Romans*, were in their expectations fruſtrate: To provide therefore ſome other way (*Vortigern* being then King) Martial Succour againſt the Neighbour violence of the Northern People of this Iſland was requeſted, and obtained from *Germany*. Thence hither iſſued *Saxons*, *Jutes* (ſome will have the old name *Vites*) and *Angles*: which differed more in name, than Nation, and are in good Authors but Synonymies of the ſame Countrey-people. Theſe in proceſs of time, contrary than the *Britains* firſt hoped, eſtabliſhed to themſelves in divers parts of that we now call *England*, ſeveral Kingdomes, extruding *Vortigern*'s poſterity, and their ſubjects, into the Weſtern parts, where to this day they remain. And how can we but conjecture that of particular Cuſtomes of Law-government in their own Countrey, they made requiſite uſe in this their part of the Iſland? What thoſe were, until Chriſtianity made ſome abolition, may beſt be obſerved out of *Tacitus de moribus Germanorum*; who relates divers of their Cuſtomes, and Rites Religious. But at inquiſition of their Superſtition we aim not; their profane Laws being chiefly propoſed for Collection.

De Germanis vid. plura apud Cæſarem lib. 6. de Bell. Gall. quæ verò huc non proximè ſpectant.

I. *Rex vel Princeps* (ſaith *Tacitus*, ſpeaking of ſome of them, whoſe antique Reliques ſeem yet to continue in our Municipals) *prout ætas cuique, prout nobilitas, prout decus bellorum, prout facundia eſt, audiuntur authoritate ſuadendi magis quam jubendi poteſtate: ſi diſplicuit ſententia, fremitu aſpernantur; ſin placuit, frameas* (of neceſſity you muſt here remember our *Wapentakes*) *concutiunt. Honoratiſſimum aſſensûs genus eſt armis laudare.*

Tacit. lib. de morib Germ.

II. *Licet apud Concilium accuſare quoque; & diſcrimen capitis intendere. Diſtinctio pœnarum ex delicto, proditores & transfugas arboribus ſuſpendunt, ignavos & imbelles & corpore* (*Lipſius* will have it *torpore*, and ſhews great reaſon for it, in love towards his own Countrey) *infames cœno ac palude, injecta inſuper crate mergunt. Diverſitas ſupplicii illuc reſpicit, tanquam ſcelera oſtendi oporteat dum puniuntur, flagitia abſcondi.*

Vide leges Ed. Confeſs. ap. Lamb.

Lipſ. in not. ad Tacit. ibid.

III. *Levioribus delictis pro modo pœnarum, equorum, pecorumque numero convicti multantur. Pars mulctæ Regi vel civitati, pars ipſi qui vindicatur, vel propinquis ejus exolvitur.*

IV. *Eliguntur in iis Conciliis & Princeps, qui jura per pagos vicoſque reddunt. Centeni ſingulis ex plebe Comites* (which obſerve to ſymbolize with our Hundreds) *conſilium ſimul & authoritas adſunt.*

V. *Nihil*

V. *Nihil neque publicæ neque privatæ rei niſi armati agunt, ſed arma ſumere non ante cuiquam moris, quam civitas ſuffecturum probaverit. Tum in ipſo Concilio vel principum aliquis, vel pater, vel propinquus, ſcuto frameâque Juvenem ornant. Hæc apud illos Toga, hic primus* (here have you reſemblance of our Knighting) *juventæ honos: ante hoc domus pars videntur, mox Reipublicæ.*

Hæc debemus virtutibus, ut non præſentes ſolum illas, ſed etiam ablatas è conſpectú colamus. *Senec.* lib. 4. de benefic. *ca.* 30.

VI. *Inſignis nobilitas aut magna patrum merita, principis dignationem etiam adoleſcentulis aſſignant.* Note there the *propagation of Gentry* through true honour deſerving vertue, to whoſe memory is dedicated that worſhip, which is oft-times beſtowed on unworthy Poſterity.

VII. *Dotem non uxor marito, ſed uxori maritus* (I might compare this to our moſt ancient and then common *Dower al huis d'eſgliſe*) *offert.*

VIII. To their religious Rites in Marriage-knots he adjoyns the puniſhment of her which violates her choſen bed. *Acciſis crinibus nudatam coram propinquis expellit domo maritus, ac per omnem vicum verbere agit.*

Vide Epiſtolam Bonifacii ad Æthelbald.

IX. *Publicatæ pudicitiæ* (underſtand it of unmarried Wenches) *nulla venia, non formâ, non ætate, non opibus maritum invenerit.*

X. *Sororum filiis idem apud avunculum, qui apud patrem honor.*

XI. *Hæredes, ſucceſſoreſque ſui cuique liberi, & nullum teſtamentum: ſi liberi non ſunt, proximus gradus in poſſeſſione fratres, patrui, avunculi;* neither until 32 H. 8. had we any Lands deviſable, except by ſpecial cuſtome binding the Common-law.

Terre nient deviſable.

XII. *Suſcipere tam inimicitias ſeu patris ſeu propinqui* (our Northern *deadly-feud* offers it ſelf here to be thought on) *quam amicitias neceſſe eſt; Nec implacabiles durant. Luitur enim etiam homicidium certo armentorum ac pecorum numero* (this interprets the *were* in the *Saxon* Laws of *William Lambard*) *recipitque ſatisfactionem univerſa Domus.*

XIII. *Suam quiſque Servus ſedem, ſuos penateis regit. Frumenti modum dominus aut pecoris aut veſtis ut colono injungit; & ſervus hactenus paret.*

Divers others of their Manners and Cuſtomes hath the ſame Authour; but not any, which except theſe recited, I think may be fitly ſtyled Law, or conſtituted Order of that Nation. But to be more particular, *Adam* of *Breme* will tell us out of *Einhard* of the *Saxons* (which gave chief denomination to ſuch *Germans* as floated hither) thus;

Einhard ap. Adam. Bremenſ. in hiſto. Eccleſ. cap. 5, & 6.

XIV. *Quatuor differentiis gens illa conſiſtit, Nobilium ſcilicet & liberorum, libertorumque atque ſervorum.*

XV. *Legibus firmatum ut nulla pars copulandis conjugiis propriæ ſortis terminos transferat; ſed Nobilis nobilem ducat uxorem, & liber liberam, libertus conjungatur libertæ, & ſervus Ancillæ. Si vero quiſpiam horum ſibi non congruentem, & genere præſtantiorem duxerit uxorem, cum vitæ ſuæ damno componat.*

XVI. *Ejus gentis cum quâ bellandum fuit* (this is by *Tacitus* in the ſame words repeated of the *Germans*) *quoquo modo interceptum, cum electo popularium ſuorum patriis quemque armis committunt, & victoria hujus vel illius pro præjudicio accipitur.*

XVII. Unto the times before Chriſtianity among them was received, this is to be referred; The firſt Chriſtian King *Ethelbert* of *Kent, Inter*

Bed. Eccleſ. hiſt. lib. 2. cap. 5.

cætera (as Venerable *Bede* reporteth) *bona, quæ genti ſuæ conſulendo conſerebat, etiam decreta illi judiciorum juxta exempla Romanorum, cum conſilio ſapientum inſtituit. Quæ conſcripta Anglorum ſermone, hactenus*, ſaith he, *habentur & obſervantur ab eâ.*

And very many Conſtitutions yet extant, written in the *Saxon* Tongue, are attributed to *Ine*, *Alfred*, *Edward*, *Athelſtan*, *Edmund*, *Edgar*, *Ethelred* and *Canutus* or *Knute*, tranſlated into *Latine*, and publiſhed long ſince by *William Lambard*, a learned Gentleman, with the Laws of *Edw.* the Confeſſor, ſo called, *non quod ille ſtatuerit*, ſaith one, *ſed quod obſervaverit*; whereunto are joyned divers, with title of *William* the Conqueror, which being ſo there already, according to ſeveral times in one Volume for that only purpoſe compiled, they only ſhall here be inſerted, which as yet lie diſperſed in the old Monuments of our Hiſtorians.

Malmesb. de geſt. Reg. lib. 2. cap. 11.

XVIII. *Totius Angliæ* (of King *Alured* ſo writeth *Ingulphus* Abbot of *Croyland*) *pagos & provincias in Comitatus primus omnium commutavit, Comitatus in Centurias*, i. e. *Hundredas*, *& in decimas* (as if he imitated *Jethro Moſes* Father-in-law) *id eſt, tythingas, diviſit, ut omnis indigena legalis in aliquâ centuriâ & decimâ exiſteret. Et ſi quis ſuſpectus de aliquo latrocinio, per ſuam Centuriam vel decuriam, vel condemnatus, vel * invadiatus, pœnam demeritam vel incurreret, vel vitaret. Præfectos verò provinciarum* (*qui antea Vicedomini*) *in duo officia diviſit*, i. e. *in Judices, quos nunc Juſticiarios vocamus, & in Vicecomites, qui adhuc idem nomen retinent.*

Gen. cap. 31.

Rotulus Wintoniæ.

* al. abſolutus.

Malmesb. lib. 2. de geſt. reg. c. 8.

XIX. Of King *Edgar*, the Monk of *Malmesbury* writeth thus; *Quia Compatriotæ in tabernis convenientes, jamque temulenti pro modo bibendi contenderent, ipſe clavos argenteos vaſis affigi juſſit, & dum metam ſuam quiſque cognoſceret, non plus ſubſerviente verecundiâ, vel ipſe appeteret, vel alium appetere cogeret.* Conſtraint of ſuch as were too indulgent to the deſires of their ſenſual appetite by ingurgitation of brain-ſmoaking Liquors, was by the Greek *Zaleucus* (and ſo received among the *Locrians*) no leſs than capital. But which hath been always ſo far from this State, that until the third Seſſion of the preſent Parliament, not ſo much as any pecuniary mulct endeavoured to refrain that temporary and altogether voluntary madneſs.

Athen. lib. 10. Deipnoſoph.

Stat. 4 Jac. cap. 5.

Ingulph. hiſt. pag. 512. & 508.

XX. *Nulla* (ſaith *Ingulphus*) *electio Prælatorum erat merè libera & Canonica, ſed omnes dignitates, tam Epiſcoporum quam Abbatum, per annulum & baculum Regis Curia pro ſuâ complacentiâ conferebat.*

XXI. *Chirographa*, until the Confeſſor's time, *fidelium præſentium ſubſcriptionibus, cùm crucibus aureis, aliiſque ſacris ſignaculis firma fuerunt.*

Feud. lib. 2. tit. Chart. Archiep. Cant. vide etiam Camden. in Cantio pag. 240. & Chartam Æthelulphi ſuper altare oblatam apud Ingulph. pag. 491.

XXII. *Conferebantur primò* (ſaith he, but I underſtand it of the Infancy of the *Norman* ſtate) *multa prædia nudo verbo abſque ſcripto, vel chartâ; tantum cum Domini gladio, vel galea, vel cornu, vel cratere, & plurima tenementa cum calcari, cum ſtrigili, cum arcu, & nonnulla cum ſagittâ.* This ſomewhat ſavours of *Obertus Orto*'s form of inveſtiture in his Feudals, or his of this, and differs much from our ſtrict Livery of Seiſin, which regularly ought to be made with part of and upon the Land, by gift transferred. Not unworthy (in this place) of obſervation is that Charter of *Cedwalla* King of *Suſſex*, (as among old Monuments of evidence belonging to the Arch-biſhop of *Canterbury* I have ſeen) in the Year DCLXXXVII. made to *Theodore* then

then Archbiſhop of certain Lands, with this ſubſcription ; *Ad cumulum autem Confirmationis, ego Cedwalla ceſpitem terræ prædictæ ſuper ſanctum altare Salvatoris poſui, & propriâ manu, pro ignorantia literarum, ſignum ſanctæ Crucis expreſſi, & ſubſcripſi.* The like hath *Camden* out of a Patent made by *Withered* King of *Kent*, to a Nunnery in the Iſle of *Thanet*. But to that form of conveyance which *Ingulphus* ſpeaks of, is thus added; *Sed hæc initio regni ſui : poſterioribus annis immutatus eſt iſte modus.*

The antiquity of deeming the Queen, both as Covert, and alſo a ſole perſon, with ſuch reſpective admittance, as is commonly agreed upon, and the Cuſtome of Land-forfeiture upon Felony committed, are both referred to theſe times. The firſt proved by that learned Chief Juſtice Sir *Edw. Coke*, out of a Gift made by *Æthelſwith*, Wife to King *Burghred*, to one *Cuthwulfe* her Servant DCCCLXVIII. The other from an Example by him publiſhed of one *Etheſig*, whoſe Lands were forfeited to King *Ethelred*, for feloniouſly ſtealing one *Ethelwine*'s Swine.

In Præfat. ad lib. 6. Reſp.

CHAP. IV.

William *the First*: *But none of that which under title of his Laws, is in* Lambard.

NO ſooner was the *Norman William* circled with the Crown of his Victory, but

Gervaſ. Tilb. de Scac. ca. 32. conferas quæ è Guil. Roville Alenconienſ. in Tract. de Duello tranſcripſ. cap 6. Camden in Diviſ. Brit.

I. *Decrevit ſubjectum ſibi populum* (my Author is *Gervaſe* of *Tilbury*) *juri ſcripto legibuſque ſubjicere. Propoſitis igitur legibus Anglicanis ſecundùm tripartitam earundem diſtinctionem, hoc eſt Merchenlage* (this govern'd the Shires of *Gloceſter*, *Worceſter*, *Hereford*, *Warwick*, *Oxford*, *Cheſter*, *Shropſhire*, and *Stafford*) *Weſtſaxenlage* (hereby were ordered *Kent*, *Suſſex*, *Surry*, *Barkſhire*, *Hamſhire*, *Wiltſhire*, *Somerſet*, *Dorſet* and *Devonſhire*) and *Danelage* (by it *York*, *Darby*, *Nottingham*, *Leiceſter*, *Lincoln*, *Northampton*, *Bedford*, *Buckingham*, *Hartford*, *Eſſex*, *Middleſex*, *Norfolk*, *Suffolk*, *Cambridge*, and *Huntingdon*) *quaſdam reprobavit*, *quaſdam autem approbans illis tranſmarinas Neuſtriæ* (that is *Normandy* corruptly for *Weſtriæ*, the oppoſite to that other part of the diviſion of *France*, *Euſtraſia*) *leges*, *quæ ad regni pacem tuendam efficaciſſimè videbantur*: which was not performed without earneſt and moſt humble

Hoveden. pag. 343.

requeſt of the *Engliſh*. For, as honouring with reſpect the Northern ſtock, whence his blood was derived, the Danelage he preferred, as worthier and better for Government than the mere *Engliſh*. But ſeeming at firſt inexorable, the perſwaſive remembrance of *his* Soul, which bequeathed him the Kingdom, and whoſe Laws they deſired, being, as the beſt ſuppoſed motive, inſerted in the Petitions of the conquered, he granted ſo much, that from that time *venerata per univerſam Angliam*, *corroborata & obſervata ſunt*, *præ cæteris patriæ legibus*, *leges Edwardi Regis*, *quæ priùs inventæ* (it is *Roger* of *Hoveden*'s Report) *& conſtitutæ erant in tempore Edgari avi ſui.*

Roger Hoveden. in Vit. H. 2. fo. 347.

II. *Fecit deſcribi omnem Angliam*, (the ſubſtance hereof is in moſt of the Monkiſh hiſtories, but *Florence* of *Worceſter* is the Author I now uſe) *quantum terræ quiſque Baronum ſuorum poſſidebat*, *quot feudatos milites*, *quot carucas*, *quot villanos*, *quot animalia*; *imò*, *quantum vivæ pecuniæ quiſque poſſidebat in omni regno ſuo*, *à maximo uſque ad minimum*, *& quantum redditûs quæque poſſeſſio reddere poterat.*

Florent. Wigorn.

Domeſday 18. Will. I.

This Inquiſition was returned into his Exchequer, and is a Book at this day there remaining, *Pro ſua generalitate omnia tenementa totius terræ integrè continente*: it is called Domeſday, *i. e.* the Day of Judgment, as the Abbot of *Crowland*, and *Gervaſe* of *Tilbury* have left written, *Ob hoc* (ſaith *Gervaſe*) *nos eundem librum Judiciarium nominamus*, *non quòd in eo de propoſitis aliquibus dubiis feratur ſententia*, *ſed quod à prædicto judicio non liceat ullâ ratione diſcedere.* A deſcription of it in an old *Engliſh* Hiſtorical Poet, is thus clad in Rhythmes.

Gervaſ. Tilb. cap. 32.

The

The K. William wor to wite the worth of his londe
Let enquert streitliche thorw al Engelonde,
Hou moni plou lond, and hou moni hiden also
Were in euerich shire, and wat hii were wurth pereto:
And the rents of each toun, and of the waters echone,
That wurth, and of woods eke, that there ne bileued none,
But that he wist wat hii were wurth of al Engelonde,
And wite al clene that wurth thereof ich understond
And let it write clene inou, and that scrit bude iwis
In the Tresorie at Westminster there it put is.
So that bre Kings suth, when hii ransome toke
And redy wat folc might giue, hii sond there in wor boke. Rob. Gloceſt. in hiſt. Poet.

Nor a much unlike deſcription in later times under *Hen.* 8. (as a preparatory to the levying of that intolerable demanded Subſidy of DCCCL) was either finiſhed or attempted: as by a Warrant from the Commiſſioners directed to a Conſtable of a Hundred, with charge of information, reported by *J. Stow*, is more largely declared.

III. Of Church-livings and Eccleſiaſtical fees *Matthew Paris* hath thus recorded; *Epiſcopatus & Abbatias omnes, quæ Baronias tenebant, & eatenus ab omni Seculari libertatem habuerant, ſub ſervitute ſtatuit militare, in rotulans ſingulos Epiſcopatus & Abbatias, pro voluntate ſuâ, quot milites ſibi & ſucceſſoribus ſuis, hoſtilitatis tempore, voluit à ſingulis exhiberi.* Matth. Paris in Guil. 1. pag. 8.

IV. *Excluſis hæreditate avita Anglis, agros* (learned *Camden* hath delivered it) *& prædia militibus ſuis aſſignavit, ità tamen ut dominium directum ſibi reſervaret, obſequiumque clientelari jure ſibi & ſucceſſoribus devinciret: id eſt ut omnes in feodo, ſive fide teneret, & nulli prater Regem eſſent veri domini, ſed potius fiduciarii domini, & poſſeſſores.* Camden. in Norm. aſſipulatur Matth. Weſt. Flor. Hiſt. lib. 2.

V. *Gervaſe* of *Tilbury* in a Diſcourſe of the Trial of the purity of Silver paid in ancient time into the Exchequer by weight, affirmeth that by Tradition it was received for truth, that *in primitivo regni ſtatu, poſt conquiſitionem*, no Rents were paid to the Crown in Money: *Sed ſola* (ſaith he) *victualia ſolvebantur, ex quibus in uſus quotidianos domus regiæ neceſſaria miniſtrabantur:* and ſomewhat after, *Toto igitur Willielmi primi tempore perſeveravit hæc inſtitutio uſque ad tempora Regis Henrici filii ejus* (which was *Henry* the firſt) *adeò ut viderim ego ipſe* (he lived under *Henry* the ſecond) *quoſdam, qui victualia, ſtatutis temporibus, de fundis regiis, ad Curiam deferebant. Certum quoque habebant Officiales domus regiæ, à quibus comitatibus triticum, à quibus diverſæ ſpecies carnium, & equorum pabula debebantur. His verò ſolutis ſecundum conſtitutum modum cujuſque rei, regii officiales computabant Vicecomitibus, redigentes in ſummam denariorum, pro menſurâ videlicet tritici ad panem centum hominum, ſolidum unum, pro corpore bovis paſcualis ſolidum unum, pro ariete vel ove IV. denarios, pro prebendâ XX. equorum ſimiliter IV. denarios;* But through the grievous complaints of Country Husbandmen, *oblatis vomeribus in ſignum deficientis agriculturæ*, reſpective calculation was made under *Henry Beauclerc*, and every particular Tenants ſervices reduced to a certainty of Silver, *De Summa vero Summarum quæ ex omnibus fundis ſurgebat in unoquoque comitatu, conſtituerunt Vicecomitem illius Comitatus ad Scaccarium* Gervaſ. Tilb. de Scac. ca. 23.

Scaccarium teneri, addentes ut ad Scalam ſolveret. More ſpecial form whereof the ſame Author hath largely reported.

Hoveden. hiſt. fo. 512. VI. *Chirographa chartas vocabant, & chartarum firmitatem cum cereâ impreſſione per uniuſcujuſque ſpeciale ſigillum ſub inſtillatione trium vel IV. aſtantium, conficere conſtituebant.*

VII. *Anglicum idioma tantum abhorrebant, quod leges terræ ſtatutaque Anglicorum Regum Gallicâ linguâ tractarentur* (Pleadings until reformation in time of *E.* 3. remaining in the ſame Tongue) *& pueris etiam in Scholis principia literarum Grammatica Gallicè ac non Anglicè traderentur. Modus etiam ſcribendi Anglicus omitteretur, & modus Gallicus in Chartis & in libris omnibus admitteretur:* Thus to be Frenchified grew ſo common, and before all *Engliſh* Titles ſo reſpectfully alone honoured, that *Vlſtan* Prelate of *Worceſter* in the red King's time, was for his ignorance in that Tongue chiefly depoſed from his Biſhoprick.

St. 36 E. 3. cap. 15.

Math. Paris. VIII. *Cervum vel Capreolum capienti oculi eruebantur.*

IX. The Law of *Coverfeu* (the name yet remaineth) that by ringing a Bell at Night, all Lights and Fire in every Houſe ſhould retire from our appearance, acknowledgeth him as firſt Inſtitutor.

Polydor. Virg. hiſt. lib. 9.

Hen. Hunting. lib. 6. hiſt. fol. 212. X. *Si aliquis quempiam* (it is in *Henry* of *Huntingdon*) *quâcunque de causâ peremiſſet, capitali ſubjacebat ſententiæ.*

Bract. lib. 3. tract. de Coron. cap. 28. XI. *Si aliquem* (I would read it *aliquam*, perſwaded by what I find in *Bracton*'s Treatiſe of rape) *vi oppreſſiſſet, genitalibus privabatur armis.*

Polydor. hiſt. lib. 5. Lamb. Explicat. verb. Camden. in Norman D. Lib. Coke in Pralat. ad lib. 3. XII. If we durſt believe the *Italian Polydore*, here ſhould ſucceed an Inſtitution of Sheriffs, and Trial by *Jury* of XII. Touching the laſt, *Camden* and *Lambard* out of the *Saxon* Laws of *Etheldred*, have convinced him of an error too fairly flouriſhed with braving terms. For the firſt, and both ſince them the right H. the L. *Coke*. But what elſe he hath of any probability you thus receive.

XIII. *Conſtituit ut quater quotannis in multos dies conventus celebrarentur eo loci quo ipſe fieri juberet, quibus in conventibus Judices ſedibus diſcreti forum agerent, juſque populo dicerent.*

XIV. *Alios inſtituit Judices, qui ſine provocatione juriſdictionem ac judicia exercerent, à quibus, uti à ſinu Principis, cuncti Litigatores eò confluentes jura peterent, & ad eos ſuas controverſias referrent.*

XV. *Præfectos alios conſtituit, qui maleficia vindicanda curarent. Hos Juſticiarios pacis nuncupavit.* Yet I cannot ſo ſoon think that name to be literally ſo ancient under his favour, with whom too curious in a ſtrange ſtate, the kind Laws of religious hoſpitality may without injuſtice diſpenſe.

CHAP.

CHAP. V.

What was received under William le Rous.

VAin it were to expect any good Conſtitutions of *William* the Second, *Omnis legum ſiluit juſtitia, cauſiſque* (ſaith *Florence* of *Worceſter*) *ſub juſtitio poſitis; ſola in principibus imperabat pecunia.*

I. *Polydore* attributeth to him the original of that cuſtome, whereby his Succeſſors claim profits or Firſt-fruits of vacant Biſhopricks and Monaſteries of the Patronage of the Crown. Indeed it is true and apparent, that he had a ſpecial gift of delaying new Elections for prorogation of his gains. And at his Death were in his hands the Temporalties of *Canterbury*, *Winchester* and *Salisbury*, and of Abbies that number quadrupled. Polydor. lib. 10. hiſt. Matth. Paris.

II. *Publico* (writeth he) *edicto vetuit unumquemque ſine commeatu ſuo ex Anglia egredi.* That Archbiſhop *Anſelme* was enjoyned under no ſmall pain, that he ſhould not paſs the Seas, to viſit Pope *Urban* under this Prince, is true and plain enough; but for any ſuch general Edict, I know no better authority, his being in this, as in other things, ſuſpicious: as yet my belief is, that the conſtitution of *non Aler ouſter le Mere*, is of ſome later birth.

III. *Venationes quas Rex primo* (the words are *Malmesburies*, but read *primus*) *adeò prohibuit, ut capitale eſſet ſupplicium prendiſſe Cervum.* Malmesb. lib. 4. de geſt. reg.

CHAP.

CHAP. VI.

Henry Beauclerc *reſtored and invented Common Liberties.*

REformation was needful by the ſucceeding *Beauclerc*, of the common injuſtice practiſed throughout the Kingdom, eſpecially by a delegation of exacting authority made to one *Ranulph*, afterwards Biſhop of *Durham*, by *le Rous*: and was thus endeavoured. Immediately after his Coronation Charters of State-amendment were by publick authority ſent into every County with particular Cuſtoms expreſſed, allowed, abrogated or altered in them. That which was directed to *Hugh* of *Bockland*, Sheriff of *Hereford*, reported by *Matthew Paris*, after Church-liberty confirmed, *Ita quod nec eam vendam, nec ad firmam ponam, nec mortuo Archiepiſcopo, vel Epiſcopo, vel Abbate, aliquid accipiam de dominio Eccleſiæ, vel de hominibus, donec ſucceſſor in eam ingrediatur*, thus provides for the Subject; Matth. Paris, pag. 74.

Omnes malas conſuetudines, quibus regnum Angliæ injuſte opprimebatur, inde aufero: Quas malas conſuetudines in parte hic pono.

I. *Si quis Baronum meorum, Comitum, vel aliorum qui de me tenent, mortuus fuerit, Hæres ſuus non redimet terram ſuam ſicut facere conſueverat tempore patris mei, ſed juſtâ & legitimâ relevatione relevabit eam.*

II. *Homines Baronum meorum legitimâ & juſta relevatione relevabunt terras de dominis ſuis.*

III. *Si quis Baronum, vel aliorum hominum meorum, filiam ſuam tradere voluerit, ſive ſororem, ſive neptem, ſive cognatam, mecum inde loquatur; ſed neque ego aliquid de ſuo pro hac licentia accipiam, neque defendam quin eam det, excepto ſi eam dare voluerit inimico meo.*

IV. *Si mortuo Barone vel alio homine meo filia hæres remanſerit, dabo illam cum conſilio Baronum meorum cum terra ſuâ.*

V. *Si mortuo marito uxor ejus remanſerit, & ſine liberis fuerit, dotem ſuam & maritagium habebit, dum corpus ſuum legitimè ſervabit.: & eam non dabo niſi per ſecundum velle ſuum, & terræ liberorum Cuſtos erit ſive uxor, ſive alius propinquior, qui juſtus eſſe debet.*

VI. *Præcipio ut homines mei ſimiliter ſe contineant erga filios & filias & uxores hominum ſuorum.*

VII. *Monetagium commune quod capiebatur per Civitates vel Comitatus, quod non fuit tempore Ed. R. hoc ne amodò fiat, omninò defendo.*

VIII. *Si quis captus fuerit, ſive monetarius ſive alius, cum falsâ monetâ, juſtitia recta inde fiat.*

IX. *Si quis Baronum vel hominum meorum infirmabitur, ſicut ipſe dabit, vel dare juſſerit pecuniam ſuam, ita datam eſſe concedo; quod ſi ipſe, præventus vel armis vel infirmitate, pecuniam ſuam nec dederit, nec dare diſpoſuerit, uxor ſua ſive liberi, aut parentes, & legitimi homines ſui pro animâ ejus eam dividant, ſicut eis melius viſum fuerit.* Somewhat later times admitted the diſpoſition of Inteſtates Goods, and Probate of Teſtaments, V. Glanvil, lib. 7. cap. 8.

Teſtaments, to be in Epiſcopal Juriſdiction. *John Stratford* in one of his Provincial Conſtitutions of Church-liberty, and *Fairefax* a Common Lawyer under *Richard* the Third, affirm that Power in Eccleſiaſtick Courts to have been in ancient time (for the Civil Law it ſelf in expreſs Text refers it to the Lay Magiſtrate) by Act of Parliament ordained.

Lind. provinc. conſtit. de immunit. Eccleſ. lib. 3. & de teſtament. Statutum 5 Eccleſiaſt. 2 Rich. 3. Teſtam. 4. v. Inſ. in Stephan. 1. C. tit. de teſtament. l. conſulta divalia v. in Johann. art. 15.

X. *Si quis Baronum, vel hominum meorum, forisfecerit, non dabit vadium in miſericordiâ pecuniæ ſuæ, ſicut faciebat tempore patris vel fratris mei* (they were the two precedent *Williams*) *ſed ſecundum forisfacturæ modum, nec ita emendabit ſicut emendaſſet retro tempore patris mei vel fratris.*

XI. *Si perfidiæ vel ſceleris convictus fuerit, ſicut culpa ſic emendet.*

XII. *Foreſtas communi conſilio Baronum meorum in manu mea ita retinui, ſicut pater meus eas habuit.*

XIII. *Militibus, qui per loricas terras ſuas defendunt* (i. e. which hold their Lands *per fee de Hauberke*, to be ready in a Coat of Mail for Martial Service) *terras dominicarum carucarum ſuarum quietas ab omnibus Geldis & omni proprio Dominio meo concedo, ut, ſicut tam magno gravamine alleviati ſunt, ita equis & armis benè ſe inſtruant, ut apti & parati ſint ad ſervitium meum, & ad defenſionem regni mei.*

V. Hotoman. verb. feudal. Hauberticum feudum.

XIV. *Lagam Regis Edwardi vobis reddo, cum illis emendationibus quibus pater meus eam emendavit* (you have them in *Lambard*) *conſilio Baronum ſuorum.* Thus far out of that tranſcribed Charter.

XV. *Rapinas Curialium, furta, ſtupra, edicto compeſcuit, deprehenſis oculos cum teſticulis evelli præcipiens.* *William* of *Malmsbury* is hereof Author; but *Florence* of *Worceſter*, and *Roger* of *Hoveden*, that for Theft his puniſhment was, as now by Hanging, Death; but for maintenance of *Malmesbury*'s report, I remember a miracle reported out of a Manuſcript in *Fox* his Eccleſiaſtical Hiſtory, of one *Eilward* of King's *Weſton* in *Bedfordſhire*, attainted in time of *Henry Fitz l'Empres*, for ſtealing a pair of Hedging Gloves, and a Whetſtone, and having by execution loſt his Eyes and Genitals, had through devout prayer at *Tho. Becket*'s Shrine in *Canterbury*, reſtitution (I fear the Monk that wrote it, might have had a Whetſtone without ſtealing) of whatſoever Members and Faculties were by that inflicted puniſhment, taken from him.

Malmesb. lib. 5. de geſt. reg. Atque alibi antiquitùs quod docent Iſocrates in oratione contra Lochit. Sen. Epiſt. 7. Lamprid. in Alex. Severo & alii, cæterum an in bonos Mores, Reinque publicam conducat, diſputant: quin & auſi ſunt negaſſe, Friſius in lib. de Rep. Tho. Morus, in Utopiâ, &c.

Ex lib. Monarch. Cant. de Mirac. B. Tho. apud Foxum. in hiſt. Eccleſ. lib. 4. fo. 228.

XVI. *Contra Trapezitas* (*quos vulgò monetarios vocant*) *præcipuam ſui diligentiam exhibuit; nullum falſarium quin pugnum perderet impune abire permittens, qui fuit intellectus falſitatis ſuæ commercio fatuos irriſiſſe:* This falſifying of money by *Hoveden*, was loſs of our Eyes and Genitals: *Gemiticenſis* and the Monk which made the continuance to *Florence* of *Worceſter*, agreeing to *Malmesbury* in this, that the offenders loſt their right hands; but further adding that, which the firſt God of the Gentiles was compelled to endure, deprivation of his external parts of humane propagation.

Malmesbur.

Guil. Gemiticenſ. de Ducibus Norm. lib. 7. ca. 23. & Contin. ad Florent. Wigorn. pag. 498.

XVII. *Statuit ut nullus obolus* (the Author is *Roger* of *Hoveden*) *quos & rotundos eſſe juſſit, aut etiam quadrans, ſi integer eſſet, reſpueretur.*

Roger de Hoved. annal. 2. fo. 270.

Malmesb. l. 5.

XVIII. *Mercatorum falsam ulnam* (*Malmesbury* speaks) *castigavit brachii sui mensurâ adhibitâ, omnibusque per Angliam propositâ.*

XIX. *Curialibus suis ubicunque villarum esset, quantum à Rusticis gratis accipere, quantum & quoto pretio emere debuissent, edixit, transgressores vel gravi pecuniarum mulctâ, vel vitæ dispendio affisiens.*

Math. Westm. lib. 2. Flor. hist.

XX. Much stir both at *Rome* and in *England* was touching Investiture of Bishops and Abbots by Lay hands: *Anselme*, Arch-Prelate of *Canterbury* mainly opposing himself against it; whose perswasion so at length wrought with the King, that it was permitted *ut ab eo tempore in reliquum* (*Matthew* of *Westminster* after others reports it) *nunquam per donationem Baculi pastoralis vel annuli quisquam de Episcopatu vel Abbatiâ, per Regem, vel quamlibet laicam personam, investiretur in Anglia*; Malmesb. l. 5. de gest. reg. Mat. Paris pag. 87. *Retento tamen electionis & regalium privilegio*; Notwithstanding this in the year CIↃ. C. VII. *per annulum & baculum* (as *Matthew Paris* tells us) was by the same *Henry* one *Rodolph* made Arch-Bishop of *Canterbury*.

Stowzus annal. p. 190.

XXI. He restored (*John Stow* now speaks to you) to his Subjects the use of Lights in the night, which lights, and also fire, had been forbidden by his Father to be used, after the ringing of a Bell at eight of the Clock at night.

Flor. hist. l. 2.

XXII. *Fecit omnes Milites Angliæ crines suos ad justum modum abscindere, qui priùs longitudine capillorum* (out of *Flores Historiarum*) *cum fœminis certabant.*

Polyd. hist. lib. 11.

XXIII. A Tribute of 3 *s.* of every Hide was exacted for augmentation of a Dowry for the Kings Daughter *Mawde*, to be married to the Emperour *Henry* the Fourth: whereupon, saith *Polydore*, *Secuti sunt istud institutum quærendarum dotum ad collationem filiarum, cæteri deinde Reges, adeo posteritas suorum commodorum tenax semper fuit*; referring that known Service of *ayde à file marrier*, to this as the *first example* thereof; though the antiquity of that custom can reckon as many years as since *Romulus* his first institution of Patrons and Clients (whence Feuds and Courts-Baron, as *Udalricus Zasius* conjectureth, by way of imitation, proceeded in following times) and no less the whole title thereof. And the other *à faire Fitz Chevaler, & de rançome*, are in the old *Graund Custumier* of *Normandy*.

Halicarnass. 2. antiq. Rom. & v. Sueton. in Caligula cap. 42. Zas. in comm. ad lib. 2. F. de orig. Turr.

XXIV. Imminent peril was then, lest *French* Conspiracies should get violent possession of the Dutchy of *Normandy*; to prevent it with a Sinewy Army, *primùm omnium populo imponit* (take it upon *Polydore*'s credit) *grave tributum causâ novi belli gerendi, id quod apud posteriores Reges in consuetudinem venit.* Of the *Norman* Line Masculine he was the last; and this the last, I make of his Laws.

Polyb. lib. 11. hist. Ang.

CHAP.

CHAP. VII.
Stephen *of* Blois.

CRaſhing of Armour and pronouncing of Laws, have ſuch antipathy, that his injurious Succeſſor, *Stephen of Blois* will put us to the charge of ſmall room. At his Inauguration, by Oath he confirmed divers generalities for liberties, from ancient time uſed, of the Church, but ſo religiouſly, that, as one ſaith of him, He ſeemed to have therefore only ſworn, that he might be forſworn. But of them one was eſpecially thus:

I. *Si quis Epiſcopus vel Abbas vel alia Eccleſiaſtica perſona, ante mortem ſuam rationabiliter ſua diſtribuerit, vel diſtribuenda ſtatuerit, firmum manere concedo: ſi vero morte præoccupatus fuerit, pro ſalute animæ ejus Eccleſiæ conſilio* (ſee before in the ninth of *Henry Beauclerc*) *eadem fiat diſtributio.* Malmesb. l. 1. hiſt. novell.

II. *Caſtella per ſingulas provincias* (ſaith *William* of *Newborough*) *ſtudio partium crebro ſurrexerant; erantque in Angliâ quodammodo tot Reges, vel potius Tyranni, quot Domini Caſtellorum, habentes ſinguli percuſſuram proprii numiſmatis, & poteſtatem ſubditis regio more dicendi juris.* Guil. Neubrigenſ. lib. 1. rer. Anglic. cap. 22.

III. *Danegeldum* (which how it was firſt rated and impoſed, you may find in the *Confeſſor*'s Laws) *quod anteceſſores ſui accipere ſolebant ſingulis annis, in æternum condonabat.* *Henry* of *Huntingdon* and *Roger* of *Hoveden* affirm it. Huntingd. l. 8. hiſt. Hoveden part. 1. f. 276.

IV. An Eccleſiaſtical Synod was held at *London* under *Theobald* of *Canterbury*, the King and Noblemen being alſo preſent, *totumque illud concilium novis appellationibus infrenduit. In Angliâ namque appellationes in uſu non erant, donec eas Henr. Wintonienſis Epiſcopus, dum Legatus eſſet* (which was about this time) *malo ſuo crudeliter intruſit.* Ibid.

V. *Tempore Regis Stephani* (as I read in *John* of *Salisbury's Polycraticon*) *à regno juſſæ ſunt Leges Romanæ, quas in Britanniam Domus venerabilis Patris Theobaldi, Britanniarum Primatis aſciverat; Ne quis libro etiam retineret edicto regio prohibitum eſt.* What the *Roman Laws* (if you underſtand the *Imperials*) had ever to do with this State as a rule for ſquaring our Judgements, is not only by this relation made manifeſt, but by an expreſs aſſertion of the High Court of Parliament (which wrought wonders) under *Richard* of *Burdeaux*; whenas *Thomas* of *Woodſtock*, Duke of *Gloceſter*, *Richard* Earl of *Arundel*, *Thomas Beauchamp* Earl of *Derby*, and *Thomas* Earl of *Nottingham*, appealed *Alexander Nevill* Arch-Biſhop of *York*, *Robert de Vere* Duke of *Ireland*, *Michael de la Poole* Earl of *Suffolke*, with others, of ſeducing the Kings facile humour to their own deſires, the particulars whereof appear in the Thirty Eight Articles comprehended in the Parliament Rolls of the Eleventh of his Reign; advice being demanded touching the formality of the Appeal both of Common Lawyers and Civilians, they all agreed, —That it was inſufficient in both Laws; but anſwer was given by the Baronage, that they would adjudge it by *Parliamentary authority*; neither would they be directed by the Civil Law, *pur ceque la royalme d'Angleterre n'eſtoit devant ces heures, ny à l'entent de noſtre dit Seigneur Roy, & Seigneures du Parliament nnq' ne ſerra rules ne governes per la ley civil*: and by Judgement of Exile with effect they proceeded: But this is ſomewhat out of the liſts. Jo. Salisburienſ. Polycrat. lib. 8. cap. 22. v. diſceptationem de caſtellis Epiſcoporum apud Malmesbur. lib. 1. hiſt. novel. 11 R. 2. Rot. Parliam.

CHAP. VIII.

Henry Fitz-L'Empres, *and his* Clarendon *Conſtitutions reſtored to themſelves, and purged from the faults wherewith they have been publiſhed.*

ADoption and right of Bloud gave, after *Stephen*'s Death, the Crown to *Henry Plantagenet Fitz l'Empres*; His firſt care tending wholly to the good of the State, was to have the numerous increaſe of Caſtles and Forts (which in his Predeceſſors time through multitude of Province-Tyrants, whom they nouriſhed, were ſwollen to the number of CIↃ. C. XV.) abated; ſo was it by expreſs command performed, and the Laws of his Grand-father *Beauclerc* likewiſe confirmed. A recognition alſo was made at *Clarendon*, *Præſidente Joanne de Oxoniâ, de mandato ipſius Regis, præſentibus etiam Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus & Proceribus regni*, of divers Cuſtomes and Rites of Government for deciſion of no ſmall controverſies between the King, guarded with ſtout Maintainers of his Crown, and the Prelates, who in their ambitious aims laboured for exemption of their Perſons, habits and poſſeſſions, from ſecular Juriſdiction.

Guil. de novo burgo lib. 1. rer. Anglic. cap. 22.

Matth. Paris fol. 134.

I. *De advocatione & præſentatione Eccleſiarum; ſi controverſia emerſerit inter Laicos, vel inter Laicos & Clericos, vel inter Clericos, in Curiâ D. R. tractetur & terminetur.*

II. *Eccleſiæ de fendo D. Regis non poſſunt imperpetuum dari abſque aſſenſu & conceſſione ipſius.*

III. *Clerici rectati & accuſati de quâcunque re, ſummoniti à Juſtitiâ Regis, venient in Curiam ipſius reſponſuri ibidem de hoc, unde videbitur Curiæ Regis quod ibi ſit reſpondendum, & in Curiâ Eccleſ. unde videbitur quod ibi ſit reſpondendum, ita quod Juſtitia Regis mittet in Curiam S. E. ad videndum quâ ratione ibi res tractabitur.*

IV. *Si Clericus convictus vel confeſſus fuerit, non debet eum de cætero Eccleſia tueri.*

V. *Archiepiſcopis, Epiſcopis & perſonis regni non licet exire regnum abſque licentiâ D. Regis: & ſi exierit* (here is the true root of the old reſtraint from paſſing the Seas without Licence) *ſi Regi placuerit, aſſecurabunt eum quòd nec in eundo nec in redeundo, vel moram faciendo, perquirent malum ſive damnum D. Regi.*

V. in Johan. art. 15.

VI. *Excommunicati non debent dare vadium ad remanentiam, nec præſtare Juramentum, ſed tantum vadium & plegium ſtandi judicio Eccleſiæ, ut abſolvantur.*

VII. *Laici non debent accuſari niſi per certos & legales accuſatores & teſtes in præſentiâ Archiepiſcopi, vel Epiſcopi; ita quod Archidiaconus non perdat jus ſuum nec quicquam quod inde habere debeat.*

VIII. *Si tales fuerint qui culpantur quod non velit vel non audeat aliquis eos accuſare, Vicecomes requiſitus ab eo faciat jurare XII. legales homines*

mines de vicineto, ſeu de villâ coram Epiſcopo, quod inde veritatem ſecundum conſcientiam ſuam manifeſtabunt.

IX. *Nullus qui de Rege tenet in Capite nec aliquis dominicorum miniſtrorum, ſub interdicto* (that is a cenſure Eccleſiaſtical, whereby the Adminiſtration of Sacraments is prohibited in ſome particular place, or among ſome certain Perſons) *ponatur; niſi prius Dominus Rex, ſi in terrâ fuerit, conveniatur, vel Juſtitia ejus, ſi fuerit extra regnum: & rectum de ipſo faciat, & ita ut quod pertinebit ad regiam Curiam, ibidem terminetur, & de eo quod ſpectabit ad Eccleſiaſticam Curiam, ad eandem mittatur, ut ibidem tractetur.*

X. *De appellationibus, ſicubi emerſerint, ab Archidiacono debent ad Epiſcopum, & ab Epiſcopo ad Archiepiſcopum, & ſi Archiepiſcopus defuerit in juſtitiâ exhibendâ, ad D. Regem perveniendum eſt poſtremo, ut præcepto ipſius in Curiâ Archiepiſcopi terminetur controverſia: Ita quod non debet ulterius procedere abſque aſſenſu D. Regis.*

Vide verò Rogerum Hovedenum pag. 303.

XI. *Si Calumnia emerſerit inter Clericum & Laicum, vel inter Laicum & Clericum, de ullo tenemento quod Clericus velit ad eleemoſynam trahere, laicus verò ad laicum feudum, recognitione XII. legalium hominum per Capitalis Juſtitiæ Regis conſiderationem terminabitur, utrum tenementum ſit pertinens ad Eleemoſynam ſive ad feudum laicum, coram ipſa Juſtitia Regis; Et ſi recognitum fuerit ad Eleemoſynam pertinere, placitum erit in Curiâ Eccleſiaſticâ; ſi vero ad laicum feudum, niſi ambo tenementum de eodem Epiſcopo vel Barone advocaverint, erit placitum in Curiâ regiâ; ſed ſi uterque advocaverit de feudo illo eundem Epiſcopum vel Baronem, erit placitum in Curiâ ipſius, ità quod propter factam recognitionem ſeiſinam non amittat qui prius ſeiſitus fuerat, donec per placitum diſrationatum ſit.*

XII. *Qui de Civitate vel caſtello vel Burgo vel Dominico Manerio D. Regis fuerit, ſi ab Archidiacono vel Epiſcopo ſuper aliquo delicto citatus fuerit, unde debeat eis reſpondere, & ad citationes eorum ſatisfacere noluerit, bene liceat eum ſub interdicto ponere; ſed non debet excommunicari, priuſquam Capitalis Juſtitia D. Regis villæ illius conveniatur, ut juſticiet eum ad ſatisfactionem venire; Et ſi Juſtitia R. inde defecerit, ipſe erit in miſericordiâ D. R. & exinde poterit Epiſcopus eum accuſatum Eccleſiaſticâ juſtitiâ coercere.*

XIII. *Archiepiſcopi, Epiſcopi, & univerſæ perſonæ regni qui de rege tenent in Capite, & habent poſſeſſiones ſuas de D. Rege, ſicut Baroniam, & inde reſpondent Juſticiis & Miniſtris Regis, & faciunt omnes rectitudines & conſuetudines regias, ſicut Barones cæteri, debent intereſſe judiciis Curiæ D. Regis cum Baronibus ſuis, uſque perveniatur ad diminutionem membrorum vel ad mortem.*

XIV. *Cum vacaverit Archiepiſcopatus vel Epiſcopatus vel Abbatia, vel Prioratus de Dominio Regis, debet eſſe in manu ipſius, & inde percipiet omnes redditus & exitus, ſicut dominicos; Et cum ventum fuerit ad conſulendum Eccleſiæ, debet D. Rex mandare potiores perſonas Eccleſiæ; & in capellâ ipſius Regis debet fieri electio, aſſenſu D. Regis, & conſilio perſonarum regni quas ad hoc faciendum vocaverit, & ibidem faciet electus homagium & fidelitatem D. Regi, ſicut ligio Domino, de vitâ ſuâ, & membris, & de honore ſuo terreno, ſalvo ordine ſuo, priuſquam ſit conſecratus.*

XV. *Si quiſquam de proceribus deforciaverit Archiepiſcopo, Epiſcopo vel Archidiacono, de ſe vel de ſuis Juſtitiam exhibere, Rex debet juſtitiare.*

XVI. *Si*

XVI. *Si forte aliquis deforciaverit D. Regi rectitudinem ſuam, Archiepiſcopus, Epiſcopus, & Archidiaconus debent eum juſtitiare, ut Regi ſatisfaciat.*

XVII. *Catalla eorum qui ſunt in Regis forisfacto, non detineat Eccleſia, vel cœmeterium contra juſtitiam Regis, quia ipſius Regis ſunt, ſive in Eccleſiis, ſive extra fuerint inventa.*

XVIII. *Placita de debitis quæ fide interpoſita debentur, vel abſque interpoſitione fidei, ſint in Curia Regis.*

XIX. *Filii Ruſticorum non debent ordinari abſque aſſenſu Domini, de cujus terrâ nati dignoſcuntur.*

Different in particulars of no ſlight moment are the reported *Clarendon* Conſtitutions in the greater Hiſtory of *Matthew Paris*, firſt publiſhed (as I think) by that Reverend Father *Matthew Parker*, Arch-Biſhop of *Canterbury*, whoſe Archetype, as it was tranſcribed by a Countrey Vicar, and delivered to the Printer's hands (I have part of that Tranſcript to witneſs it, in mine own hands) is but equal in every *Iota* to the publiſhed Copy: But as they are here written I have ſeen them added, without diſcrepancy of a ſyllable, at the end of the Life and Death of St. *Thomas* of *Canterbury*, drawn in ancient hand, and out of a quaternity of former Authors, *Herbert* of *Doſeham*, *William* a Monk of *Canterbury*, *John* of *Salisbury* and *Alan* Abbot of *Teukesbury*, into a juſt Volume collected: *Huic libello noſtro* (ſaith the Author, that you may know what work they make here) *inſerere ſtuduimus funeſtum illud & famoſum Decreti Chirographum, conſuetudines* (*viz.*) *illas regias apud Clarendonam promulgatas, quas ideò hic interſeruimus, ut legant ſecula poſt futura, & hinc cognoſcant quàm juſta, quàm perſpicua fuerit glorioſi Neomartyris Thomæ, primò Exilii & pòſt Martyrii cauſa.* What contention (after confirmation by Oath of the whole Baronage) grew hereupon 'twixt the King and that Canonized Arch-Biſhop, is in every Chronologer of thoſe times enough declared. But it cannot be ungratefully received, if both for reſpect to an old *Engliſh* endeavouring Wit, and alſo for matter, form and phraſe of relation, out of *Robert* of *Gloceſter*, be made this ſuperaddition.

Ex MS. vita Thom. Cantuar.

Robert Gloceſt. hiſt. Poet.

No man ne might thenche the lobe that there was
Bitwene the K. H. and the gode man S. Thomas;
The diuel had enui therto, and ſet bitwen them ſeu,
Alas, alas thulke ſtond, boz all to well it greu.
Boz there had ere ibe kings of Luther dede
As W. Baſtard, and his ſon W. the rede.
That Luther Laws made inou, and held in al the lond
The K. uold not beleue the lawes that he fond,
Ne that his elderne hulde, ne the godeman S. Thomas
Thought that thing age right neuer law uas.
Ne ſothnes and cuſtom mid ſtrength up iheld,
And he wiſt that bre dere Lourd in the Goſpel told
That he himſelfe was ſothnes, and cuſtum nought,
Theruoze Luther cuſtumes he uould graent nought.
Ne the K. uould bileue that is elderne ad iheld,
So that conteke ſpzung bituene them manifold.
The K. dzou to right law mani Luther cuſtume,
S. Thomas thom withſed, and granted ſome.

The

The Lawes that itholle now tell be granted bawe.
Zuf a yuman hath a ſone to clergi idzaw
Pe ne ſall without is lourdes itrouned nought be,
Noz yuman ne mai nought be made agen is lourds will free.

In the eighteenth of *Clarendon* Cuſtoms is the ſubſtance of this particular; where *Ruſticorum* interpreted Yumen in this Poet, is mentioned: To both, as a Synonymy, is *homines* uſed as well in the Law-Annals of later times, and in Writs of *Ven. fac. xii tam milites quam alios liberos & legales homines de vicineto, &c.* as in older Conſtitutions before expreſſed. ȝemen is the common allowed *Saxon* root, whence our now uſual name of Yeoman had his beginning: but my conceit with a painted impoſture deceives me, if the ancient *Latin* be not Father of both, but in a Dialect different. Nor let it be a fault *ad Appios & Coruncas redire*, ſome taſte in Yeomen is of *Homines*, but more of *Hemones*, which in *Ennius* and *Feſtus*, is not otherwiſe ſignificant, than *Themen* in *Engliſh*, altered only in Character in ȝemen the *Saxon* word. But to my Law-rhythms again; Reg. Indic. fol. 7. Feſt. in verb. Hemones. Paul. Merul. ad lib. 1. annal. Enn.

Another thing be granted eke as ye mow nouiſe;
Zuf a man of holi Chirch hath eni lay fee,
Parſon, other what he be, he ſal do therebozе
Kings ſerbice that there ualth, that is right ne be bozloze,
In plaiding and in aſſiſe be and in judgement alſo.
Bote war man ſal be bilemed, other to deth ido.
Pe granted eke zuf eni man the Kings traitoz were,
And eni man is chateux to holi chirch bere
That holi chirch ne ſolde nought the chateux there let
That the K. there other is as is owne is ne wette.
Noz all that the felon hath the Kings it is
And echе man mai in holi church is owne take iwis.
Pe granted eke that a chirche of the Kings ſe
In none ſtede ene and eber ne ſtold igiue be
As to bous of religion, without the Kings lebe,
And that be other the patron the gift firſt gabe.
S. Thomas granted well theſe and other mo,
And theſe other be withſede that did him well woe.

I. Zuf bituene twei leud men were eni ſtriding,
Other bituene a leud and a clerc, foz holi chirch thing,
As boz boulon of chirch whether ſhold the chirch giue,
The K. wold that in his court the ple ſtold be dziue;
Noz as much as a leud man that the o parti was
Chanliche was under the K. & under no biſhop nas.

What he ſtyles *Lewedmen*, is by our common phraſe Lay-men, *Leudes* in the old *Teutonique* and *Saxon* (as Λάος in *Greek* from Λᾶας, *i. e.* a Stone, referred, as *Pindar* hath it, to that mythick inſtauration of hard mankind by *Deucalion* and *Pyrrha*) is equivalent to the *Multitude* or *common people*, in the preſent *Engliſh*. Pind. Olymp. 9. Lipſius lib. 5. Poliorceticon

Foz

Chauc in Prolog. and *in the* Somners *tale.*

For yef a Prieſt be foule, on whome we truſt,
No wonder is a leude man to ruſt.

But then the ignorant are by it noted, rather than who are not Clerks; For the ſame *Jeoffrey* in another place ſaith,

This every leud Vicar and Parſon can ſay.

Robert of *Gloceſter* ſpeaks again:

II. Another was no biſhop, ne clerk nathe mo,
Me ſholde without Kings leue out of this lond go.
And than hii ſholde ſuere upe the boke ywis.
That hii ne ſold purchas no uvel the K. ne none of is.

III. The thrid was yuf eni man in mauſing were ibrought,
And ſuth come to amendment, ne age were nought,
That he ne ſuore up the bot, at borowes find ſolde
To ſtand to that holy Chirch there of him toky wold.

IV. The berth was that no man that of the K. huld ought
In cheiſe or in eni ſerbiſe in mauſing were ibrought,
Bote the wardeins of holy chirch that brought him thereto,
The K. ſede or is bailifes wat he ad miſdo,
And loked berſt were thei to amendment it bring,
And bote hii wolde by their leue do the mauſing.

V. The biſt was, that Biſhoprikes and Abbeis alſo
That vacans were of prelas in the K. hand were ido,
And that the K. ſold all the land as is owne take,
Uort at laſt that him luſt eni prelat there make.
And than thulke prelat ſould in is chapel ichole be.
Of is clarks which he wuld to ſuch prelate biſe.
And than wan he were ichole in is chapel right there,
Homage he ſolde him do ar he confirmed were.

VI. The ſixt was yuf eni play to chapitle were idraw,
And eni man made is appele, yuf me dude him unlaw,
That to the Biſhop from Erchedeken is appele ſold make,
And from Biſhop to Archebiſſop and ſuth none other take,
And but the Erchebiſſops court to right him wold bring,
That he ſold from him be cluthe bidore the King.
And from the K. non other mo ſo that attan end
Plaining of holi chirch to the K. ſhold wend.
And the K. amend ſolde the Erchebiſſops dede,
And be as in the Popes ſtede, and S. Thomas it withſtede.

VII. The ſeuenthe was that plaiding that of det were
To yeld wel thorw truth iplight, and nought ihold nere
Althei thorw truth it were, that ple ſold be ibrought
Bidore the K. and is bailies and to holy chirch nought.

VIII. The

VIII. The eighth was that in the lond citation none nere
Thorw bull of the Pope of Rome, and clene bileued were.

IX. The nithe was that Peters pence that me gadereth manion
The Pope nere nought on iſend, ac the K. ethone.

X. The tethe was puf eni Clarke as felon were itake,
And vor felon iproved and ne might it not forſake,
That me ſold him verſt diſordein and ſuth thorw there law,
And thorw judgement of the land hong him other to draw.
Vor theſe and vor other mo the Godeman S. Thomas
Fleu verſt out of Englond and eke imartred was,
Vor he ſei there uas bote o way, other he muſt ſtille be,
Other holy thirch was iſent, that of right was ſo fre.

Abſolution of the Prelates Oath, which among others confirmed what he ſoon made retractation of, was obtained from *Alexander* the Third, Biſhop of *Rome*; who gave an inſolent repulſe to the Kings Ambaſſadors, ſent for his ratification of that which the Baronage had thus concluded. The King herewith exceedingly provoked, made preſent diſpatch of Letters to every Sheriff in the Kingdom, thus pronouncing;

XIX. *Præcipio tibi, quod ſi aliquis Clericus, vel Laicus in ballivâ tuâ, Romanam Curiam appellaverit, eum capias & firmiter teneas, donec voluntatem meam præcipiam; & omnes redditus Clericorum Archiepiſcopi, & poſſeſſiones ſeiſias in manum meam, & omnium Clericorum qui cum Archiepiſcopo ſunt, patres, matres, fratres, ſorores, Nepotes, & Neptes pones per ſalvos plegios, & catalla eorum, donec voluntatem meam inde præcipiam. Et hoc breve tecum afferas cùm ſummonitus fueris.* Matth. Paris pag. 137.

XX. *Si quis inventus fuerit ferens literas D. Papæ* (this is ſpoken of before in my Poet) *vel mandatum, aut Thomæ Archiepiſcopi, continens interdictum Chriſtianitatis in Angliâ, capiatur & retineatur, donec inde voluntatem meam præcipiam.* But in the Annals of *Roger* of *Hoveden*, *Dedo ſicut de Regis traditore & regni, ſine dilatione juſtitia fiat.* Roger de Hoved. annal. 2. fo. 284.

XXI. Promulgation alſo, by way of prohibition, was made of moſt of the former diminutions of Papal or Epiſcopal authority: The Clergy-men, that were beyond Sea, under forfeiture of their Livings, were charged, by Summons in their places of *due reſidence*, to return.

XXII. *Londonienſis & Norwicenſis Epiſcopi ſummoneantur, & ſint coram Juſtitiariis Regis ad rectum faciendum, quod contra Statuta regni interdixerunt terram Comitis Hugonis, & in ipſum ſententiam anathematis intulerunt.* Matth. Paris.

XXIII. *Denarii S.* Petri *colligantur & cuſtodiantur.*

XXIV. In the 22*th* of his Reign at *Nottingham*, *celebravit* (ſaith *Hoveden*) *magnum Concilium de Statutis regni ſui, & coram Rege filio ſuo, & coram Archiepiſcopis, Epiſcopis, Comitibus & Baronibus regni ſui communi omnium conſilio diviſit regnum ſuum in VI. partes, per quarum ſingulas tres Juſtitiarios Itinerantes conſtituit*; Here was the infancy of that form of Circuits by Juſtices in Eyre, whoſe names and deſcribed limits my Author in a Sexpartite diviſion hath remembred. *Et poſtea* (you hear him again) *fecit D. Rex omnes prædictos Juſticiarios jurare ſuper Sacroſancta Evangelia, quod ipſi bonâ fide & ſine malo ingenio, has ſubſcriptas* Hoveden part. 2. p. 313. Quadripartitam etiam regni ad hunc modum ſub eodem principe habes diviſionem apud eundem, fo. 337.

ſubſcriptas aſſiſas cuſtodirent, & inviolabiliter ab hominibus regni facerent cuſtodiri; The ſubſcribed Articles with this Title thus he hath Recorded:

Aſſiſæ Henrici Regis *factæ apud* Clarendon *& renovatæ apud* Northamtune.

V. Camden in Ord. Angl. pag. 123. quicum conferas Feud. lib. 2. tit. 10. & 21. quin & Malmesb. hiſt. Nov. lib. 2. fol. 103. l. 25. ſolidatus, *&c.* Reg. Brev. Judic. fo. 1. in Hab. fac. viſ.

XXV. *SI quis rectatus fuerit coram Juſticiis D. Regis de murdro, vel latrocinio, vel roberia, vel receptatione hominum tale facientium, vel de falſoneria, vel iniquâ combuſtione, per Sacramentum XII. militum de Hundredo, & ſi milites non adfuerint* (I here underſtand by *Milites* no other than ſuch as were *fendatorii*, or held of ſome Superior by Knight's ſervice, thereby diſtinguiſhed from *milites ſolidarii* or *Servientes*, i. e. hired Soldiers, and both from the name of dignity uſed in ceremonious Chivalry far ſeparated) *per Sacramentum XII. liberorum & legalium hominum, & per Sacramentum IV. hominum de unaquâque villa Hundredi, eat ad Judicium Aquæ* (*i. e.* to the watry Ordeal, deſcribed with the fiery in *Lambard*'s expoſition of words before his *Saxon* Laws, and in the Antiquities of the Church of *Britany*, publiſhed, as I ſuppoſe, by *Matthew Parker* Archbiſhop of *Canterbury*) *& ſi perierit, alterum pedem amittat*; And *apud* NORTHAMTUNE *additum eſt pro rigore Juſtitiæ, quod dexterum ſimiliter pugnum cum pede amittat, & regnum abjuret & infra* XL. *dies à regno exulet*; *Et ſi ad aquam mundus fuerit, inveniat plegios, & remaneat in regno, niſi rectatus fuerit de murdro vel aliquâ turpi felonià per commune Comitatus & legalium militum patriæ: de quo, ſi prædicto modo rectatus fuerit, quamvis ad aquam mundus fuerit, nihilominus infra* XL. *dies à regno exeat, & catalla ſua ſecum aſportet, ſalvo jure Dominorum ſuorum, & regnum abjuret in miſericordia D. Regis.*

XXVI. *Nulli liceat, neque in burgo, neque in villa, hoſpitari aliquem extraneum ultra unam noctem in domo ſua, quem ad rectum habere noluerit, niſi hoſpitatus ille eſſonium rationabile habuerit, quod hoſpes domus monſtret vicinis ſuis, & cum receſſerit, coram vicinis recedat & per Diem.*

XXVII. *Si quis ſeiſitus fuerit de murdro, vel de latrocinio, vel roberia, vel falſoneria, & inde ſit cognoſcens, vel de aliqua alia felonia, quam fecerit, coram præpoſito Hundredi, vel Burgi, & coram legalibus hominibus, id poſteà coram Juſtitiis negare non poterit. Et ſi idem ſine ſeiſina coram eis aliquid hujuſmodi recognoverit, hoc ſimul coram Juſtitiis negare non poterit.*

XXVIII. *Si quis obierit Francus tenens, hæredes ipſius remaneant in tali ſeiſina, qualem pater ſuus habuit die qua fuit vivus & mortuus, de Feodo ſuo, & catalla ſua habeant unde faciant diviſam defuncti, & dominum ſuum poſteà requirant, & ei faciant de relevio & aliis, quæ eis facere debent de feodo ſuo.*

XXIX. *Si hæres fuerit infra ætatem, Dominus feodi recipiat Homagium ſuum, & habeat in cuſtodiâ illum quamdiu debuerit; alii Domini, ſi plures fuerint, homagium ejus recipiant, & ipſe faciat eis quod facere debuerit.*

XXX. *Uxor*

XXX. *Uxor defuncti habeat dotem ſuam, & partem de catallis ejus quæ eam contingit,* which by the Law in thoſe days was a third part, if the dead had left iſſue, but a moity, if he were *ſolus.* Ranulph de Glanv. lib. 7. ca. 5. Bract. lib. 2. de acq. rer. dom. cap. 26. ſect. 2.

XXXI. *Si Dominus feodi negat hæredibus defuncti ſeiſinam ejuſdem feodi quam exigunt, Juſtitiarii D. Regis faciant inde fieri recognitionem per XII. legales homines, qualem ſeiſinam defunctus inde habuit die qua fuit vivus & mortuus;* This is the very *Mortdanceſter; Et ſicut recognitum fuerit, ita hæredibus ejus reſtituant; & ſi quis contrà hoc fecerit & inde attaintus fuerit, remaneat in miſericordiâ Regis.*

XXXII. *Juſtitiæ Domini Regis faciant fieri recognitionem de diſſeiſinis factis ſuper aſſiſam, à tempore quo D. Rex venit in Angliam proximo poſt pacem factam inter ipſum & Regem filium ſuum.*

XXXIII. *Juſtitiæ capiant fidelitates D. Regis infrà Clauſ. Paſch. & ad ultimum infrà Clauſ. Pentecoſt. ab omnibus videlicet Comitibus, Baronibus, Militibus & liberè tenentibus, & etiam ruſticis qui in regno manere voluerint; & qui facere noluerit fidelitatem, tanquam inimicus D. Regis capiatur.*

XXXIV. *Habent etiam Juſtitiæ præcipere quod omnes illi qui nondum fecerunt homagium & ligeantiam D. Regi, quod ad diem, quem eis nominabunt, veniant & faciant Regi Homagium, & ligeantiam, ſicut ligeo Domino.*

XXXV. *Juſtitiæ faciant omnes Juſtitias & rectitudines ſpectantes ad D. Regem, & ad coronam ſuam, per breve Domini Regis, vel illorum qui in loco ejus erunt, de feodo dimidii milit. & infrà* (If the account of a *Knights fee* be by the annual value, then confidently according to the quadruple proportion of the known Relief, you may affirm it, by *xx l.* Lands; and ſo likewiſe by compariſon with Soccage payment upon the Stat. of *Weſt.* 1. for aid, A fair Fitz chivalier, or a File marryer; but by a calculation prefixed to the red Book of the Exchequer, DCLXXX. Acres make exactly the Summe) *niſi tam grandis ſit querela, quod non poſſit deduci ſine D. Rege, vel talis quam Juſtitiæ ei reponent pro dubitatione ſuâ, vel ad illos qui in loco ejus erunt; intendant tamen pro poſſe ſuo ad commodum D. Regis faciendum.* V. Camden in Ordin. Angl. Caſum item Nevillæ in libr. 7. Relat. D. E. Coke huc refer.

XXXVI. *Faciant aſſiſam de latronibus iniquis, & malefactoribus terræ quæ aſſiſa eſt, per concilium Regis, filii ſui, & hominum ſuorum; per quos ituri ſunt Comitatus.*

XXXVII. *Juſtitiæ prouideant quod caſtella diruta prorſus diruantur, & diruenda bene proſternantur; Et niſi hoc fecerint, D. Rex Judicium Curiæ ſuæ de eis habere voluerit, ſicut de contemptoribus præcepti ſui.*

XXXVIII. *Juſtitiæ inquirant de Eſcaetis, de Eccleſiis, de terris, de fœminis quæ ſunt de donatione D. Regis.*

XXXIX. *Ballivi D. Regis reſpondeant ad Scaccarium, tam de aſſiſo redditu, quam de omnibus perquiſitionibus ſuis, quas faciunt in balliviis ſuis, exceptis illis quæ pertinent ad vicecomitatum.*

XL. *Juſtitiæ inquirant de cuſtodiis caſtellorum, & qui, & quantum, & ubi eas debeant, & poſtea mandent D. Regi.*

XLI. *Latro, ex quo capitur, Vicecomiti tradatur ad cuſtodiendum, & ſi Vicecomes abſens fuerit, ducatur ad proximum Caſtellanum, & ipſe illum cuſtodiat donec illum liberet Vicecomiti.*

XLII. *Juſtitiæ faciant quærere per conſuetudinem terræ, illos qui à regno receſſerunt, & niſi redire voluerint infra terminum nominatum, &*

ſtare ad rectum in Curiâ Regis, poſtea utlagentur, & nomina utlagorum afferantur ad Paſcha, & ad Feſt. S. Mich. ad Scaccarium, & exinde mittantur D. Regi.

While thus the King made provident Order for Lay-buſineſs, *Hugo à Petra Leonis*, the Pope's Legate in *England*, laboured for dilatation of Church; to whom was granted by the King:

Matth. Paris pag. 177.

XLIII. *Quod de cætero Clericus* (*Matthew Paris* his report) *non trahatur ante Judicem ſecularem perſonaliter, pro aliquo crimine vel tranſgreſſione, niſi pro foreſtâ & laico feudo, unde Regi vel alii D. Seculari laicum debetur ſervitium.*

XLIV. *Ut Archiepiſcopatus, Epiſcopatus, vel Abbatiæ, non teneantur in manu Regis ultra annum, niſi pro cauſâ evidente, vel neceſſitate urgente.*

XLV. *Ut interfectores Clericorum convicti vel confeſſi, coram Juſticiario regni, præſente Epiſcopo puniantur.*

Rog. de Hoved. part. 2. f. 446.

XLVI. *Quod Clerici duellum facere non cogantur.*

XLVII. *Statuit apud* WOODSTOCK, *quod quicunque forisfecerit ei de foreſtâ ſuâ, ſemel de venatione ſuâ, de ipſo ſalvi plegii capiantur; & ſi iterum forisfecerit, ſimiliter capiantur de ipſo ſalvi plegii; ſi autem tertiò idem forisfecerit, nulli plegii capiantur, ſed proprium corpus forisfacturis*: which concludes what of his Laws common Hiſtories afford.

CHAP.

CHAP. IX.

Richard Ceur de Lion.

THIS *Henry*'s Succeſſor was the ſtout *Richard Ceur de Lion*: Himſelf in Perſon attending the Eaſtern Wars. Diviſion by his Commiſſion was made *for maintaining the Laws and Cuſtomes of the Kingdom*, of the whole Government, 'twixt *Hugh* of *Puſar*, Biſhop of *Durham*, and *William* Biſhop of *Ely*, Lord Chancellor. The ſtream of all, howſoever there was an aſſociation of *Hugh Bardulph* and *William Briwere*, was carried as the Prelates pleaſed, until their ambitious inſolency made a period to their too great authority. After his return Juſtices in Eyre were ſent into every County, *& ſecundùm ſubſcriptorum formam capitulorum* (ſaith *Hoveden*) *proceſſerunt in juſticiis exequendis.*

Roger de Hoveden, par. 2. fo. 423.

Forma Procedendi in Placitis Coronæ Regis.

I. *INprimis eligendi ſunt IV. milites de toto Comitatu; qui per Sacramentum ſuum eligant II. legales milites de quolibet hundredo, vel Wapentacco. Et illi II. eligant ſuper ſacramentum ſuum X. milites de ſingulis Hundredis, vel Wapentaccis; vel ſi milites defuerint, legales & liberos homines, ità quòd illi XII. inſimul reſpondeant de omnibus capitulis de toto Hundredo vel Wapentacco.*

Capitula Placitorum Coronæ Regis.

II. *DE placitis Coronæ novis & veteribus, & omnibus quæ nondum ſint finita, coram Juſticiariis D. Regis:*

III. *Item de omnibus recognitionibus & omnibus placitis, quæ ſummonita ſunt coram Juſticiariis per breve Regis, vel capitalis Juſtitiæ, vel à capitali Curiâ Regis coram eis miſſa.*

IV. *Item de Eſcaëtis, quæ ſunt & quæ fuerunt poſtquam Rex arripuit iter verſus terram Jeruſalem, & quæ fuerunt tunc in manu Regis, & ſunt modò in manu ejus, vel non; & de omnibus Eſcaëtis Domini Regis, ſi à manu ſua ſint remotæ, quomodò, & per quem, & in cujus manus devenerunt, & qualitèr & qui exitus inde habuerit, & quos, & quid valuerint, & quid modò valeant, & ſi aliqua eſchaëta ſit, quæ ad D. R. pertineat, quæ in manu ejus non ſit.*

V. *Item de Eccleſiis quæ ſunt de Donatione D. Regis.*

VI. *Item de cuſtodiis puerorum quæ ad D. Regem pertinent.*

VII. *Item de malefactoribus & eorum receptoribus & eis conſentientibus.*

VIII. *Item de maritagiis puellarum vel viduarum, quæ ad D. Regem pertinent.*

IX. *Item de falſonariis.*

X. *Item de Interfectoribus Judæorum, qui ſint, & qui vadii Judæorum inter-*

interfectorum, & catallis, & terris, & debitis, & chartis, & quis ea habuerit, & quantum eis debuerit, & quæ vadia habuerint, & quis ea teneat, & quantum valeant, & quis exitus inde habuerit, & quos: & omnia vadia & debita Judæorum interfectorum capiantur in manum Reg. & qui ad occisionem Judæorum fuerunt, & non fecerunt finem cum D. R. vel Justitiariis suis, capiantur, & non deliberentur nisi per D. R. vel Justitiarios suos.

XI. *Item de omnibus auxiliis datis ad redemptionem Domini Regis* (which were for his ranſome out of the hands of the Emperour Henry ..... to whom *Limpold* Duke of *Austria*, who took him Priſoner, had ſold him and amounted to CXL. Marks of Silver) *quis quantum promiserit, & quantum reddiderit, & quantum arreto sit.*

XII. *Item de Fautoribus Comitis Johannis* (it was his Brother who affected the *Engliſh* Diadem, in the time of *Richard*'s Captivity) *qui finem fecerunt cum D. Rege & qui non.*

XIII. *Item de Catallis Comitis Johannis, vel fautorum ejus, quæ ad usum D. Regis non sunt conversa, & quantum Vicecomites receperunt, vel ballivi sui, & quis aliquid contra antiquas consuetudines regni dederit.*

XIV. *Item de omnibus terris Comitis Johannis, de Dominicis & Wardis, & Escaetis, & de donis suis; & quâ de causâ data sunt ei illa dona, & omnia dona Comitis Johannis capiantur in manum Regis, præterquam illa quæ per Regem confirmata sunt.*

XV. *Item de debitis & finibus quæ debentur Comiti Johanni & quâ de causâ, & omnia exigantur ad opus D. Regis.*

XVI. *Item de fœneratoribus & eorum catallis, qui mortui sunt.* For by an old Law of the Confeſſor, Uſury under pain of loſs of the Offender's ſubſtance, is forbidden.

Leg. Ed. Confeſſ. cap. 37.

XVII. *Item, de vinis venditis contrà assisam, & de falsis mensuris, tam vini quam aliarum rerum.*

XVIII. *Item de cruciatis mortuis ante iter suum arreptum versus Jerusalem, & quis eorum catalla habuerit, & quæ, & quanta.*

Vide Guil. de novo Burgo Rer. Angl. lib 3. cap. 22.

XIX. *Item de magnis assisis, quæ sunt de centum solidatis terræ, & infrà.*

XX. *Item de defaltis.*

XXI. *Præterea in quolibet Comitatu eligantur 4. Milites, & unus Clericus, Custodes placitorum Coronæ, & nullus Vicecomes sit Justitiarius in vicecomitatu suo, nec in Comitatu, quem tenuerit post primam Coronationem D. Regis.*

Annexed is to all theſe an intricate kind of Inquiſition, appropriated to that time, of the Kings profits in Wards, and Eſcaets, with Farms, and other Country-Commodities, which would receive larger place here, than the inconveniency demands.

Guil. Neubrig. lib. 5. cap. 4. Matth. Paris 237. poſt Hovedenum pag. 424.

XXII. *Omnia debita & vadia Judæorum imbrevientur, terræ, domus, redditus & possessiones. Judæus vero, qui aliquid horum celaverit, sit in forisfacturâ D. Regis de corpore suo, & concelamento, & de omnibus possessionibus suis, & omnibus catallis suis, nec unquam concelamentum Judæo recuperare licebit*: With particular form of Place and Perſons, where, and before whom this impoſition might be performed.

XXIII. For eſpecial exerciſe in Chivalry, that practice might breed skill, and both alacrity to Arms, he inſtituted by grant, *Torneaments*, but not without certain reſtraints; as by his Charter thereof

thereof made to *Hubert* Archbiſhop of *Canterbury*, and reported in the red Book of the Exchequer, is thus apparent; *Sciatis nos conceſſiſſe, quod Torneamenta ſint in Angliâ, in quinque plateis inter Sarum & Wilton, inter Warwick & Kelingworth, inter Stamford & Walingford, inter Brakeley & Mixeber, inter Bly & Tikehill: Ita quod pax terræ meæ non infringatur, nec de foreſtis noſtris damnum inferatur. Et Comes, qui ibi torniare voluerit, dabit nobis* XX. *Marcas* (underſtand it of Silver) *& Baro X. Marcas; & Miles, qui terram habuerit, IV. Marcas, & qui non habuerit, II. Marcas. Nullus autem extraneus ibi torniabit; unde vobis mandamus quod ad diem Torneamenti habeatis ibi II. Clericos, & II. Milites veſtros, ad capiendum ſacramentum de Comite & Barone, quod vobis de prædictâ pecuniâ ante Torneamentum ſatisfacient; & quod nullum torniare permittant, antequam ſuper hoc ſatisfecerit; Et X. Marcas pro cartâ ad opus noſtrum capiatis, unde Comes Sarum & Comes de Clara & Comes de Warrena plegii ſunt. Teſte meipſo apud villam Epiſcopi, xxii. die Auguſti.* Firſt uſe of theſe Torneaments was (as *William* of *Newborough* delivereth) in the time of *Stephen*, prohibited under *Henry Fitz-L'Empres*, and by this Lyon-hearted Prince, to Martial Honor, reſtored. Lib. Rub. Scacc.

XXIV. *Præcepit, quod omnes, qui chartas habebant, venirent ad novum ſigillum ſuum* (this new Seal was, after the old loſt, with one *Roger*, the King's Vice-Chancellor, drowned in the *Cyprian* Sea) *ad chartas ſuas renovandas.* Roger de Hoveden, pag. 424, & 440.

XXV. *Conſtitutum eſt, quod omnes menſuræ totius Angliæ ſint ejuſdem quantitatis, tam de bladis, quam de leguminibus & de rebus conſimilibus; ſcilicet una bona ſumma æqui: & hæc menſura ſit rata, tam in Civitatibus & Burgis quam extra; Menſura etiam vini & Cereviſiæ, & cunctorum liquorum, ſit ejuſdem quantitatis, ſecundum diverſitatem liquorum; Pondera etiam & libræ, & cæteræ Peſiæ, ſint ejuſdem quantitatis in toto regno, ſecundum diverſitatem mercaturarum.*

XXVI. *Menſuris Bladorum & liquorum, vini & Cereviſiæ, inclaventur claves, ne per dolum poſſint falſari.*

XXVII. *Lanei Panni, ubicunque fiunt, fiant de eâdem latitudine, ſcilicet de duabus ulnis infra liſuras, & ejuſdem bonitatis in medio & in lateribus.*

XXVIII. *Eadem ulna ſit in toto regno, & ejuſdem quantitatis, & ulna ſit ferrea.*

XXIX. *Ne quis Mercator prætendat Seldæ ſuæ rubros pannos, vel nigros, vel ſcuta, vel aliqua alia, per quæ viſus emptorum ſæpe decipiuntur, ad bonum pannum eligendum.*

XXX. *Nulla tinctura vendenda, niſi ſolummodò nigra, nec fiat* (ſo I diſtinguiſh the words) *alicubi in regno, niſi in capitalibus civitatibus, aut Burgis IV. aut VI. legales homines de ipsâ villâ ſecundùm quantitatem villæ; ſimiliter, in vicecomitatu; aut cum præpoſitis Civitatis aut Burgi, ſi in manu Vicecomitis non fuerint, aſſignentur ad aſſiſam cuſtodiendam; ſcilicet ſub hâc formâ, ut ipſi videant & certi ſint quod omnia vendantur, & emantur per eandem menſuram, & omnes menſuræ ſint ejuſdem quantitatis, ſecundùm diverſitatem mercium.*

XXXII. The puniſhment of the offenders, was *corpora eorum capiantur, in carcerem detrudantur, & omnia quæ ipſius ſunt, ad fiſci commodum, ſeiſiantur.* Matth. Paris, pag. 257.

XXXIII. If the inſtituted Comptrollers fail in that truſt committed to them, *de catallis ſuis in miſericordia Regis remaneant.*

XXXIV. An

Hoveden part 2. f. 443.

XXXIV. An Aid of 5 *s.* the *hide*, was taken through the Kingdom: for collection were Commiſſions granted, and power of conventing the Land tenants, and charging them by Oath to make true report of Hides in every Mannor; *Ad pœnam verò Juratorum, qui aliquid contra Juramentum ſuum celaverint in hoc negotio, ſtatutum erat, quod quicunque Ruſticus convictus fuiſſet de perjurio, daret domino meliorem bovem de carucâ ſuâ, & inſuper reſponderet de proprio ad opus D. Regis, tantum pecuniæ, quantum fuiſſet declaratum per ſuam perjuriam fuiſſe celatum.* Tempore E. 1. tit Avowry 102. & Reg. orig. fo. 9. a. *Si verò liber homo* (by the oppoſite of the title (*Ruſticus*) I conceive generally *Tenants in ancient demeſne*, which are not allowed the addition of Freeman, and Copyholders) *convictus fuiſſet, eſſet in miſericordiâ Regis, & inſuper refunderet de proprio, ad opus D. Regis, quantum fuerit per eum celatum, ſicut & Ruſticus.*

XXXV. *Statutum fuit, quod quilibet Baro cum Vicecomite faceret diſtrictiones ſuper homines ſuos, &, ſi per defectum Baronum, diſtrictiones factæ non fuiſſent, caperetur de dominico Baronum quod ſuper homines ſuos reſtaret reddendum, & ipſi Barones ad homines ſuos inde caperent: & libera feoda Eccleſiarum parochialium de hoc Tallagio excipiebantur, & omnes excaet. Baronum quæ fuerunt in manu Domini Regis, communicaverunt.*

fo. li. 6. Avowry 267. 11. li. 4. fo. 31. b.

XXXVI. *Serganteriæ D. Regis, quæ non erant de feodis militum, excipiebantur:* Take it of Graund or petit Serjeanty, and it fully accords with ſome Term Books, of later times allowed, and publiſhed.

Capitula Placitorum Coronæ D. Regis,

Hoveden part 2. fo. 445.

WHereof *Hugh Bardulph*, *Roger Arundel*, and *Geffrey Harſet*, Juſtices in Eire through the Northern parts, held Plea.

XXXVII. De omnibus aſſiſis, & de magnis aſſiſis, uſque ad X. libratas terræ, & infrá.

XXXVIII. De Advocationibus Eccleſiarum, & capiantur coram eis electiones magnæ aſſiſæ per mandatum D. Regis, vel ejus capitalis Juſtitiæ.

XXXIX. De Eccleſiis vacantibus vel non vacantibus, quæ fuerunt de donatione D. Regis.

XL. De Excaetis D. Regis.

XLI. De Donationibus & de valectis, & puellis, quæ ſunt, vel eſſe debent, in donatione D. Regis, & de valentiis terrarum ſuarum, & ſi quis eorum vel earum ſit maritatus, & inquiratur cui, & per quem, & a quo tempore.

XLII. Quæ viduæ non finierunt pro ſe maritandis, & finis capiatur ad opus D. Regis.

XLIII. De Serganteriis D. Regis, quis ea habet, & per quem, & quantum valent, & qui finem non fecerunt ad auxilium Domini Regis (look before in *art. xxxvii.*) *& qui fecerunt, & finis capiatur.*

XLIV. De uſuris Chriſtianorum, & eorum catallis, qui ſunt mortui.

XLV. De illis, qui ſunt in miſericordiâ Regis, & non amerciati.

XLVI. De purpreſturis D. Regis.

XLVII. De viis D. Regis eſtreciatis.

XLVIII. De theſauris inventis.

XLIX. De malefactoribus & eorum receptoribus.

L. De fugitivis retatis, reverſis poſt ultimam aſſiſam.

LI. De

LI. De omnibus ponderibus, & menſuris, & ulnis renovatis, & ſi IV. homines (refer hither the *xxxii.* Article) *qui ſunt attornati ad hæc cuſtodienda in unaquâque villâ, fecerint quod inde ſtatutum eſt, & ſi attachiaverint tranſgreſſores illius aſſiſæ, & ſi non attachiaverint, prout debent, puniantur ſicut ipſi tranſgreſſores.*

LII. Totum vinum illius qui vendidit contra aſſiſam, capietur ad opus D. Regis, & præterea Dominus vini & venditores, ſint in miſericordiâ Regis.

LIII. Of defaults in the Commiſſioners, appointed for levying the aids.

LIV. De Cuſtodibus portuum maris, ſi quid receperunt quod non rediderunt, & ſi mercedem aliquam receperunt pro jure Regis retinendo, & ſi quis aliquid receperit, qui non fuerit ad hoc attornatus.

The Juſtices of the Foreſt, *Hugh* of *Nevill* chief Juſtice, *Hugh Wac*, and *Erniſe* of *Nevil* made their Circuits, authoriſed by the King's Commiſſion; that in every County, where they were to paſs, they ſhould call before them *ad placita foreſtæ*, Archbiſhops, Biſhops, Earls, Barons, all Free-holders, the chief of every Town, and IV. Yeomen *ad audienda præcepta Regis.*

Hæc eſt aſſiſa D. R. & hæc ſunt Præcepta de foreſtis ſuis in Anglia, facta per aſſenſum & Conſilium Archiepiſcop. & Epiſc. & Abbat. Comit. & Bar. & Militum totius regni.

LV. THat none ſhould truſt, in hope of eaſie compoſition for offences, touching Veniſon, or other matters of the Foreſt, but that Juſtice ſhould be done to the Convict, *qualis facta fuit tempore Henr. avi patris D. Regis* (viz.) *ut amittant oculos & teſticulos.*

LVI. That none preſume to keep Bowes, Arrowes, Grey-hounds, or other Dogs in the King's Foreſt, *niſi habeant ipſum Regem ad Warrantum ſuum, vel aliquem alium, qui eum poſſit inde warrantizare.*

LVII. Quod nullus donet vel vendat aliquid ad deſtructionem boſci ſui, vel ad waſtum quæ ſit infrà foreſtam Regis, ſed concedit bene quod capiant de boſcis ſuis quod neceſſe eis fuerit, ſine waſto, & hoc per viſum foreſtarii ſui & viridariorum ſuorum.

LVIII. Quod omnes illi, qui boſcos habent infrà metas foreſtæ D. Regis, ponant idoneos foreſtarios in boſcis ſuis, de quibus foreſtariis ipſi, quorum boſci fuerint, ſint plegii, vel tales inveniant plegios idoneos, qui poſſunt emendare, ſi foreſtarii in aliquo forisfecerint, quod D. Regi pertineat.

LIX. That the King's Foreſters take ſpecial ſurvey, leſt other Mens Woods, *intrà metas foreſtæ*, be deſtroyed; *& ſciant benè illi, quorum boſci fuerint, quòd de ipſiſmet, vel de eorum terris, capietur emendatio, & non de alio.*

LX. Quod ſui foreſtarii jurent, quod ſecundùm omne poſſe ſuum, tenebunt ejus aſſiſam, qualem eam fecit de foreſtis ſuis, & quòd non vexabunt milites, neque probos homines, de hoc quod D. Rex iis conceſſit de boſcis eorum.

LXI. That in every County, where he hath Veniſon, there be placed XII. *milites, ad cuſtodiendam venationem ſuam & viride in foreſtis ſuis, & quod IV. milites ponantur ad adgiſtandos boſcos ſuos, & ad*

recipiendum pannagium ſuum, & cuſtodiendum & defendendum.

LXII. *Quod nullus adgiſtet boſcos ſuos infra metas foreſtæ* (I think you had need tranſlate *metas* into *regard* oft-times among theſe Orders) *antequam boſci eorum adgiſtentur; Et eſt ſciendum quod incipit adgiſtamentum D. Regis XV. Dies ante Feſtum S. Michaëlis, & durat XV. Dies poſt Feſtum S. Michaëlis.*

LXIII. *Si foreſtarius ejus habet in Cuſtodiâ ſuâ dominicos boſcos regis, & boſci illi deſtructi fuerunt, & non poſſit nec ſciat juſtam cauſam monſtrare, quare boſci deſtruantur, nihil aliud capiatur de foreſtario illo, niſi proprium corpus ſuum.*

LXIV. If any Clergyman offend in the Foreſt, *non dubitent Foreſtarii in eos manus imponere, ad eos reſiſtendos & capiendos, ipſe enim eos inde Warrantizabit.*

LXV. That every three Years view be taken of all Aſſarts, as well new as old, and of all purpreſtures, and of all waſts of the woods, and that they be ſeverally inrolled.

LXVI. That Archbiſhops, Biſhops, Barons, Knights, Freeholders and all Yeomen of the Land, appear at the Summons *Magiſtri Foreſtarii ſui, ad placitanda placita de foreſtis ſuis.*

LXVII. *Ne aliqua Caretta exeat Chiminum in Foreſtâ Regis, neque porci ſint in Foreſtâ Regis tempore de Foineſun,* (it is now *à fœtatione*, called the Fence, or rather the Fawnes Month) *ſcilicet XV. Diebus antè nativitatem S. Joannis Baptiſtæ, & XV. Diebus poſt idem Feſtum.*

LXVIII. Who ſo ſhall offend in taking the King's Veniſon, and be thereof attainted, ſhall have Judgment of loſs of his Eyes and Genitals; *Qui autem forisfecerit in Foreſtâ Regis de viridi, ſive per culpaturam, ſive per esbrancaturam, ſive per foditionem turvarum, ſive per eſcoriationem moræ, ſive per culpationem de Subvemore, ſive per eſſartum, ſive per novam purpreſturam; per ſepem, vel foſſatam; vel per * remotionem molendini, vel curſus aquæ, vel Bercariæ; vel aliarum domorum, vel per fœnum falcandum extra ſepes vel extra foſſata; erit in miſericordiâ Regis de pecuniâ ſuâ, niſi habeat viridarios, vel foreſtarios Regis ad Warrantum.*

* Al. renovationem.

LXIX. *Similiter qui arcus vel ſagittas portaverint vel Canes duxerint ſine Copulâ per foreſtam Regis, & inde attaintus fuerit, erit in miſericordiâ Regis.*

LXX. *Videnda ſunt in reguardo nova aſſarta & vetera inbladata poſt ultimum reguardum, & quo blado vel legumine inbladata ſunt.*

LXXI. *Nova aſſarta in manu Regis, ſi vetera aſſarta inbladata ſunt de frumento vel ſiligine, unaquæque acra dabit regi XII. denarios de illâ veſtiturâ, & ſi inbladata fuerint de avenâ, vel hordeo, vel fabis vel piſis, vel alio legumine, unaquæque acra dabit regi VI. denarios de illâ veſtiturâ; Et ſciendum eſt quod tempore Henrici Regis F. Mat. IMP. permiſſum erat intrà metas Foreſtæ foſſata fieri loco ſepium.*

LXXII. *Exiit Edictum à Rege, ut quicunque in regno ſuo forisfeciſſet Clerico, aut alii viro religioſo, non cogeretur ſatisfacere illi: ſed ſi Clericus, aut alius vir religoſus, forisfeciſſet alicui laico, ſtatim compelleretur ad ſatisfaciendum illi: unde factum eſt quod viri religioſi ad redemptionem coacti ſunt*: The main end of all was Exchequer profit; which this *Richard* too much labouring for by publiſhed Edicts at home, and contending for by Arms abroad, at length loſt it, and together unluckily his Life.

CHAP.

CHAP. X.

King John *and his Grand Charter.*

THE burden of the State after *Richard*'s death, was laid upon his Brother *John* Earl of *Moreton*. He in the immediate times after his Inauguration, made divers Laws, touching Sale and Prices of *French* Wines, reported in *Roger* of *Hoveden*'s Annals. But all conveniency of Merchandize and they were ſo incompetible, that they were almoſt as ſoon abrogated, as enacted.

Conſuetudines Scaccarii ſuper debitis D. R. inquirendis. Roger de Hoveden pag. 463.

I. *STatutum eſt in Angliâ, & per præceptum R. Joannis confirmatum, quod nullus Vicecomes recipiet aliquem ad præſentationem Baronis in Seneſchallum, qui non poſſit reſpondere de miſericordiâ pertinente ad tranſgreſſionem fidei, ſi fortè in eam inciderit. Quod autem Seneſchallus ad præſentationem Baronis, quod pacem faciat Vicecomiti de debitis domini ſui ad Scaccarium, intelligendum eſt quod ſuper Computum Vicecomitis mittatur in priſonam ſtatutam, ſecundum legem Scaccarii, & debitum Regis capiatur de catallis Domini ſui, ſecundum legem Scaccarii: Quod ſi fidem præſtitam non ſervaverit, ita quod ad Computum Vicecomitis non venerit, vel ſi venerit & ſine Licentiâ receſſerit, corpus ejus capiatur, & in priſonam ponatur ſtatutam, nec deliberetur niſi per ſpeciale mandatum D. Regis. Item mittatur ad terram Domini cujus ſeneſchallus defecerit, & de catallis ſuis ſolvatur pecunia quæ debetur, ſecundam legem Scaccarii, & ſi pecunia illa debeatur pro fine terræ, & catalla non inveniantur, unde pecunia illa ſolvatur, ipſa terra, pro quâ finis facta fuit, capiatur in manum D. Regis, & teneatur donec illa pecunia ſolvatur, ſecundum legem Scaccarii.*

II. *In pœnâ læſionis fidei, ſeneſchallus, qui finem tranſgreſſus fuerit, nunquam de hoc vel de alio debito per fidem ſuam credatur, vel recipiatur, nec dominus credatur, vel recipiatur de hoc debito, niſi de gratiâ & voluntate Regis, ſecundum legem & conſuetudinem Scaccarii.*

III. *Fecit* (not long after) *generaliter acclamari, ut legalis aſſiſa Panis inviolabiter ſub pœnâ Colliſtrigiali obſervaretur: Quæ probata fuit per piſtorem Gaufridi filii P. Juſtitiarii Angliæ, & piſtorem R. de Thurnam. Ita quod piſtores poterint ſic vendere & in quolibet quarterio lucrari III. Denarios, exceptis brennio & 2. panibus ad furn. & 4. ſervientibus IV. obolos, 2. gracionibus 1. quadrantem, & in buſia III. denarios, & in bultello obolum:* with a proportionate price and weight 'twixt Corn & Bread at large reckoned. Matth. Paris pag. 278.

IV. Celebrating the Chriſtmas at *Briſtow, Capturam avium per totam Angliam interdixit.* Idem pag. 303 & 304.

V. *Præcepit per foreſtas totius Angliæ ſepes comburere, & foſſata complanare, datis frugibus circumquâque beſtiis ad devorandum.*

VI. After tranſaction of that great controverſie 'twixt the King and *Innocent III.* Biſhop of *Rome*, publick Commandment was given for obſervation and maintenance of the Laws of *Henry* his great Grandfather. Hen. 1.

VII. *Denuntiatum eſt præterea Vicecomitibus, Foreſtariis aliiſque Miniſtris Regis, ſicut vitam ſuam diligunt, ne à quopiam aliquid violenter extorqueant, vel alicui injuriam irrogare præſumant, aut ſcottalla alicubi in regno faciant, ſicut facere conſueverunt.* Idem pag. 320.

But notwithſtanding thoſe general forms of reformation, a more ſerious and recapitulated was deſired by the whole Baronage; A grand Council is appointed at *Paul's* in *London*, and there by *Stephen* Archbiſhop of *Canterbury*, is produced a Copy of *Henry Beauclerk's* free Charter (which is before expreſſed) and the ſame delivered to the chief Clerk there, to be openly read & pronounced. As ſoon as the Barons heard it, was a uniform conſent, that maintenance and aſſertion of thoſe liberties ſhould reſt, as of more dear account, in their Martial reſolutions, than bloud or life. Nay in ſhort ſpace after, mutual combination by ſolemn Oath taken upon the Altar was made among them, that their band of Fealty diſſolved (for ſo they deemed *John's* Government had occaſioned) their Swords ſhould compel him to enſeal their demands. To that place, which now only is called the Temple (then the new-Temple) where the King lay in Warlike order, they go to execute their deſigns; He binding himſelf with an interlocutory Sentence, and giving caution of future ſatisfaction, takes day until *Eaſter* following; But all was no leſs deluſory, than dilatory: Nor any thing done with a face of compoſition, until the appointed meeting of the King and Barons (whoſe part hourly encreaſed) in *Renimed, alias Runingmede* near *Stanes* in *Middleſex*; whereof in the marriage of *Tame* and *Iſis*, thus ſings no ſmall Favourite of the Muſes;

Camden in agro Middleſex.

Subluit hic (*i.* Thames) *pratum quod dixit* Renimed *Anglus,*
Quo ſedere Duces armis anniſque verendi:
Regis Joannis *cuperent invertere ſceptrum,*
Edwardi Sancti dum leges juraque vellent,
Principe contempto, tenebroſo è carcere duci.

Where an inſtrument of publick liberties, through mediation of what is above all law, Neceſſity, was, as you ſhall hear it ſpeak, ſealed and delivered to the Baronage.

Matth. Paris pag. 341. & ſeqq.

JOHANNES Dei gratiâ Angliæ, &c. *Sciatis nos intuitu Dei, & pro ſalute Animæ noſtræ, & anteceſſorum omnium, & hæredum meorum, & ad honorem Dei, & exaltationem S. E. & emendationem regni noſtri, per conſilium venerabilium patrum noſtrorum Stephani Cant. Archiep. totius Angliæ Primatis, & S. R. E. Cardinalis, Henrici Dublinenſis Archiep. Will. Londonienſ. Epiſc. Petri Wintonienſis, Jocelini Bathonienſ. & Glaſcon. Hugonis Lincoln. Walteri Wigornienſ. Will. Coventrenſis, Benedicti Roffenſis Epiſcoporum, & M. Pandulphi D. P. Subdiaconi, & familiaris fratris M. Militiæ Templi in Angliâ, & Nobilium virorum Will. Mareſcalli Com. Penbriæ, Will. Com. Sariſburienſis, Will. Com. Warrenæ, Will. Com. Arundel, Alani de Leweia Conſtabularii Scotiæ, Warini F. Genoldi, Petri F. Herberti, & Huberti de Burgo Seneſcalli Pictaviæ, Hugonis de Nevilla, Matthæi F. Herberti, Thomæ Baſſet, Alani Baſſet, Philippi de Albeni, Robert de Ropeſle, Joannis Mareſcalli & Johannis F. Hugonis, & aliorum fidelium noſtrorum.*

V. ſtat. Weſt. 1. cap. 5. art. cler. ca. 15. de Election.

VIII. *Inprimis conceſſiſſe Deo, & hâc præſenti chartâ noſtrâ confirmaſſe, pro nobis & hæredibus noſtris in perpetuum, quod Anglicana Eccleſia libera ſit, & habeat jura ſua integra, & libertates ſuas illæſas, & ità volumus obſervari, quod apparet ex eo quod libertatem electionum, quæ maxima & magis neceſſaria reputatur Eccleſiæ Anglicanæ, merâ & ſpontaneâ voluntate ante diſcordiam inter nos & Barones noſtros manifeſtè motam, conceſſimus & chartâ noſtrâ confirmavimus, à D. PP. Innocentio tertio confirmari, quam & nos obſervabimus, & ab hæredibus noſtris in perpetuum bonâ fide volumus obſervari.*

IX. *Conceſ-*

IX. *Conceſſimus etiam, & omnibus liberis hominibus noſtris regni Angliæ, pro nobis & hæredibus noſtris in perpetuum, omnes libertates ſubſcriptas, habendas & tenendas eis & hæredibus ſuis, de nobis & hæredibus noſtris.* Theſe premiſſes are in the grand Charter of *Henry* the III. commonly publiſhed in our printed Statutes, nor in any word of moment is there a difference found 'twixt this of *John* and that of *Henry*, until the prohibition of diſparagement in marriage of young Wards; which thus commandeth, *hæredes maritentur abſque diſparagatione:* to this is added in a continued ſentence; *Ità tamen, quod antequàm contrahatur matrimonium, oſtendatur Propinquis de conſanguinitate ipſius hæredis.* The VII. and VIII. Chapters of Widows and their Quarentines, with that of the King's debtors, are alſo in like words following: But this of *John* hath this further additament.

X. *Si quis mutuo acceperit aliquid à Judæis, plùs vel minùs, & moriatur antequàm debitum illud perſolverit, debitum illud non uſuret quamdiù hæres eſt infra ætatem, de quocunque tenet; & ſi debitum iſtud incidat in manus noſtras, nos non capiemus niſi catallum contentum in chartâ*: who elſewhere ſeeks the true underſtanding of the Statute of *Merton* under title of uſury, muſt ſtill remain in an extravagant ſearch, until he return to that expoſition which lies here open.

Merton cap. 5. Confer. 35. li. 6. fo. 61. Plo. Com. fo. 236. Bract. lib. 2. cap. 26. ſect. 2. & indicem ad Plo. Comm. part 1.

XI. *Si quis moriatur, & debitum debeat Judæis, uxor ejus habeat dotem ſuam, & nil reddat de debito illo; Et ſi liberi ipſius defuncti, qui fuerunt infrà ætatem, remanſerint, provideantur eis neceſſaria, ſecundùm tenementum quod fuerit defuncti: & de reſiduo ſolvatur debitum, ſalvo tamen ſervitio dominorum: ſimili modo fiat de debitis quæ debentur aliis quàm Judæis.*

XII. *Nullum Scutagium vel auxilium ponam in regno noſtro, niſi per commune conſilium regni noſtri* (according is a grant of *E.* 1. in *Thomas* of *Walſingham*'s hiſtory) *niſi ad corpus redimendum* (in the *Norman* Cuſtomary it is *Aide de rançon*, which in an ancient Manuſcript of *xxi Ed.* 1. in the caſe of *Robert* of *Wentham*, I have ſeen releaſed between common Perſons) and *ad primogenitum filium noſtrum militem faciendum, & ad primogenitam filiam noſtram ſemel maritandam; Et ad hoc non fiet niſi rationabile auxilium: ſimili modo fiat de auxiliis de Civitate Londonienſe.* Here is adjoyned the general Franchiſes of *London*, other Cities, Boroughs, Towns and Ports *verbatim* as in the IX. Chapter, which concluded enſues.

Walſing. hiſt. E. 1.

XIII. *Ad habendum commune conſilium regni de auxiliis aſſidendis aliter quam in tribus caſibus prædictis, & de Scutagiis aſſidendis, ſubmoneri faciemus Archiepiſcopos, Epiſcopos, Abbates, Comites & majores Barones regni, ſingillatim per literas noſtras; Et præterea faciemus ſubmoneri in generali per Vicecomites & Ballivos noſtros, omnes alios qui in Capite tenent de nobis, ad certum diem, ſcilicet ad terminum* 40. *dierum ad minus, & ad certum locum; & in omnibus literis ſubmonitionis illius cauſam exponemus, & factâ ſubmonitione, negotium procedat ad diem aſſignatum, ſecundum conſilium eorum qui præſentes fuerint, quamvis non omnes ſummoniti venerint.*

XIV. *Nos non concædimus de cætero alicui, quod capiat auxilium de liberis hominibus ſuis, niſi ad corpus ſuum redimendum, & ad faciendum primogenitum filium ſuum militem, & ad primogenitam filiam ſuam ſemel maritandam; & ad hoc non fiat niſi rationabile auxilium:* Unto the XVIII. Chapter incluſively of *Henries* Charter from hence, are in both almoſt the ſame ſyllables; But whereas the printed cloſe of the ſame Chapter, is, *Salvis uxori ejus* (*i. e.* of one that is dead) *& pueris ſuis rationabilibus partibus ſuis*, here is further:

XV. *Si quis liber homo inteſtatus deceſſerit, catalla ſua per manus propinquorum*

pinquorum parentum & amicorum, per viſum Eccleſiæ diſtribuantur (ſee Art. IX. in *Hen.* 1.) *ſalvis unicuique debitis, quæ defunctus ei debebat*; and in divers old written Copies of the common and uſual *Magna Charta*'s, the ſelf ſame words continue that Chapter; All is in both alike unto the end of the proviſion for ſafe-conduct of Merchants; But thereto in this hiſtorical report ſucceeds,

V. in H. 2. art. 5.

XVI. *Liceat unicuique de cætero exire de regno noſtro, & redire ſalvò & ſecurè per terram & per aquam, ſalvâ fide noſtrâ, niſi in tempore guerræ per aliquod breve tempus propter communem utilitatem regni, exceptis impriſonatis & utlagatis, ſecundùm Legem regni, & gente contra nos guerrinâ, & mercatoribus, de quibus fiat ſicut ſupradictum eſt.* What follows in either is the ſame as well in words as ſence. And as we have now in every Man's hands a Charter of the Foreſt alſo diſtinct from the other, ſo had the Barons then to them granted; and very ſmall or no difference is found between theirs and that, whoſe fore-front is ſince ſigned with King *Henry*'s Name.

I ſuppoſe it fit place and time here to give remembrance of an eſcaped, and in every impreſſion that I have ſeen allowed fault, in the VII. Article of the Foreſt Charter, which by little alteration, and thus pointing, is corrected; *Nullus foreſtarius vel alius balivus de cætero faciat Scottallum, vel colligat herbas*, (you may read *garbas*) *vel avenam, vel bladum aliud, vel agnos, vel porcellos, nec aliquam collectam faciat (niſi*, ſo is the Print but in King *John*'s Copy, and in divers Manuſcripts of our Statutes, one having the ſubſcribed authority of *Exam. per Rot.* I have warrant to read, and diſtinguiſh with a full period at *faciat*, and turning *niſi* into *&* go thus forward) *& per viſum & Sacramentum XII. Regardatorum, quando faciunt reguardum* (taking away the Point there) *tot foreſtarii ponantur ad foreſtas cuſtodiendas, quot ad illas cuſtodiendas rationabiliter viderint ſufficere*; How much the ſence differs, ſmall obſervation ſoon diſcovers.

In Bibliotheca D. Ro. Cotton à Connington Eq. Aurati.

Stat. Annal. pag. 258.

The concluding Date of theſe granted Franchiſes, and reſtored Laws, *John Stow* ſaith was, Given by our hand in *Runingmede*, betwixt *Stanes* and *Windſor*, the *xvi.* of *June*, the *xvii.* of our Reign: Unto which all the whole Realm was ſworn. But the fluxile nature of this deceitful Prince, aided by Pope *Innocent III.* and his Nuntio *Pandulph*, ſoon looſed that kind of Royal faith and promiſe; As quick were the Barons (they by Oath had bound themſelves to conſtrain him by Arms, if their expectations in his future carriage were fruſtrate) and ready to, and did, revolt. Death of the King prevented their projects, which for this purpoſe in the IX. Year of the ſucceeding *Henry* Fitz *John* (as the firſt page of our printed Volumes of old Acts of Parliament give to every Reader teſtimony) were with ſome eaſe attained, and by his Poſterity, as the main freedom of the *Engliſh* Common-wealth, hath been ſince more than thirty times, by the true authority of the State, in their High-court, confirmed.

Soli Deo Gloria.

Chronologia huic noſtræ inſerviens EPINOMIDI.

Ante CHRISTUM. CIↃ. C. VIII.	Brutus *ille, quem Trojanâ aiunt, ſed potiſſimum Bardi, ſtirpe oriundum, à quo poſt Samotheos (magis* Semnotheos *) ſummis auſpicati, ſed aliena nempe & dubia fide fertur adpuliſſe.*
CCCCXII.	Dunvallo Molmutius.
CCCLVI.	Martia *R.* Guinthilin *Uxor.*
LV.	Julius Cæſar, *Is primum Romanis oſtendit* Britanniam, *& territa* Britannis *terga.*
Ab Incarnato Deo. LII.	Claudio Cæſare *deducta* Camalodunum *colonia Inſulaque pars in præſidialem redacta provinciam.*
CLXXX.	Commodo *Imp. obſignatam recepit palingeneſiam* Lucius *Rex ab* Elutherio *PP.*
Ab Incarnato Deo CDXLIX.	Britanniam *Anglo-Saxones advehuntur,* Theodoſio *Jun. Rom. Imp. Nec multis inde curriculis Annorum interceptis Heptarchas inter quæ jam* Anglia *diſpertita.*
Sed Camdeno è faſtis conſularibus Beda & Ninnio rationibus ſubductis CDXXVIII. *Floruere* DLXI.	Æthelbertus *Rex* Cantii, *Primus Anglo-Saxonum (fœliciſſimo ducta ſibi in uxorem auſpicio* Bertha *Francorum Regis filia) Princeps Chriſtianus.*
DCCCLXXII.	Alfredus *ſeu* Aluredus *Rex.*
DCCCCLIX.	Edgarus *Rex.*
CIↃLXVI.	Willielmus Normanniæ *Dux* Haroldum *conſerta in planitie juxta* Haſtings *in agro* Suthſexienſi *manu, atque* Anglorum *copias devicit. II. Nempe Id.* Octobr. *& regio ſe inſignivit hic titulo.*
CIↃ. LXXXVIII.	Willielmus Rufus *primi Filius.*
CIↃ. C.	Henricus *primus* Rufi *Frater.*
M. CXXXV.	Stephanus Bleſenſis.
Ab Incarnato CHRISTO CIↃ. C. LIII.	Henricus *filius* Matildis *Imp. &* Galfridi *Com.* Andegavenſis.
M. C. LXXXIX.	Richardus *primus* Henr. *Fil.*
M. C. LXXXXIX.	Joannes *R.* Richardi *Frater.*

FINIS.

TWO TREATISES

Written by

JOHN SELDEN

OF THE

INNER-TEMPLE, Eſquire.

The First,

Of the ORIGINAL

OF

Eccleſiaſtical Juriſdiction

OF

TESTAMENTS:

The Second,

Of the Diſpoſition or Adminiſtration

OF

Inteſtates Goods.

LONDON,

Printed for *Thomas Baſſet* at the *George* in *Fleet-ſtreet*, and *Richard Chiſwell* at the *Roſe* and *Crown* in S. *Paul's* Church-Yard.

MDCLXXXIII.

TREATISES

Written by

JOHN SELDEN

Of the Law of Nature

According to the

Hebrews

Of the Original of Judicatures

Or

Sanhedrin and Semicha

Of

TESTAMENTS:

Or the Disposition or Administration

Of

Intestates Goods

THE CONTENTS.

PART I.

Of the Original of Eccleſiaſtical Juriſdiction of Teſtaments.

CHAP. I.

THE Intrinſecal Juriſdiction not given to the Church by the Civil Law, Page 1

CHAP. II.

Nor by the Canon Law. p. 3

CHAP. III.

The Extrinſecal Juriſdiction by the Civil Law, in whom, ibid.

CHAP. IV.

In whom by the Canon Law, p. 4

CHAP. V.

Of the Intrinſecal Juriſdiction in the Saxons *time,* p. 5

CHAP. VI.

Whence Linwood *thinks the Juriſdiction Intrinſecal came to the Church,* p. 9

CHAP. VII.

Teſtimonies of King John *and* Henry *the Third's time, that may ſerve to prove the Extrinſecal Juriſdiction then in the Temporal Courts,* p. 11

CHAP. VIII.

Suits of Legacies perſonal in the Spiritual Court from the beginning of Henry *the Third, of the beginning of that Courſe,* p. 12

PART II.

Of the Diſpoſition or Adminiſtration of Inteſtates Goods.

CHAP. I.

In whom it was in the time of the Saxons, p. 15

CHAP. II.

In whom after the Normans *until King* John*'s time,* p. 17

CHAP. III.

In whom after the time of King John, p. 18

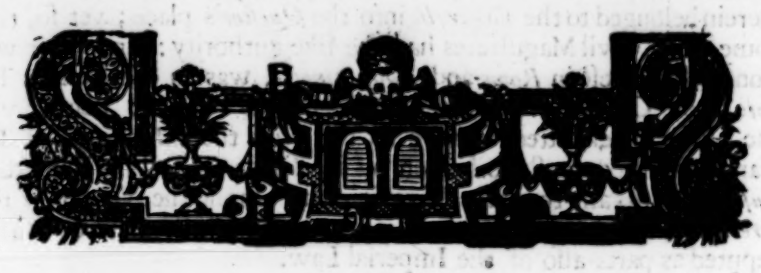
CHAP. IV.

How that ſo granted by King John*'s Charter in Parliament hath continued in practice,* p. 20

CHAP. V.

Of that of bona Inteſtatorum in manus Domini Regis capi ſolebant, p. 22

PART



PART I.

OF THE

ORIGINAL

OF

Eccleſiaſtical Juriſdiction

OF

TESTAMENTS.

CHAP. I.

The Intrinſecal Juriſdiction not given to the Church by the Civil Law.

THE Juriſdiction of Teſtaments being either *Intrinſecal* or *Extrinſecal*, (that is) either touching Probate, or Recoveries of Legacies: Firſt for the *Intrinſecal*, it is clear that it came not to the Biſhop by Imitation; or otherwiſe, from the Imperial Civil Law: for by the elder part of that Law, regularly the Probate or Aperture of Wills was before the (*a*) *Prætor*. And afterward the obſignation, inſinuation and Probate of them in *Rome*, was before the *Magiſter Cenſus*, or (*b*) *apud officium Cenſuale*, as it were before the Barons of our Exchequer; and that continued into later time. And the ſame Officer by the name of (*c*) γενικὸς, or *generalis* in *Conſtantinople*, had the ſame authority: But alſo afterwards as well the *Queſtor*'s Seal, as that of the *generalis* became to be uſed at the obſignation, and his authority alſo in the Probate or Aperture. And

(*a*) ff. Teſt. quemadmodum aperiant. per tot. Et vide etiam Auth. 74. c. 2. ſit igitur Licentia.

(*b*) De Epiſc. l. 41. & tit. de teſtam. l. 10. & 23. & Caput Theodoſ. li. 4. tit. 4. l. 4. Ubi viſendus interpres vetus.

(*c*) Authent. 44. & ibid. Cujacius, & videſis Gloſſ. Græcobarb. Meurſii in γενικὸν.

And the Emperour *Leo* (*d*) about the year 890. transferred all that herein belonged to the *Generalis* into the *Queſtor*'s place; yet ſo, that ſome other Civil Magiſtrates had the like authority: and what was done before theſe in *Rome* and *Conſtantinople*, was in other Cities before their Chief Governours, as *Defenſores* or *Præſides*: neither was the Church permitted to have to do with the Inſinuation of Teſtaments, but expreſly forbidden by a reſcript (*e*) of the Emperour *Juſtin*: nor is any thing that gives it either among the *Novells* of the *Greek* Empire, or in the *Lombards*, or *Capitulares*, which have (*f*) been reputed as parts alſo of the Imperial Law.

(*d*) Novel 44. formulas vet. Teſtam. aperiendorum, videſis I. Paul Regeſt. ſentent. l. 4. tit. 6. & Marculph. Formul. l. 2. c. 37. & 38.

(*e*) C. de Epiſc. & cler. l. 41. repetita.

(*f*) Hoſtienſ. in procem. ſum. & veruſtiores canoniſt. paſſim.

CHAP.

CHAP. II.

Nor by the Canon Law.

NEither in any General Council, or other part of the received Canon Law, doth any Testimony occurr, that gives the Church this *Intrinsecal Jurisdiction*. But in the fourth Council of (*a*) *Carthage* holden in the year 398. it was ordained, *Ut Episcopus tuitionem testamentorum non suscipiat*. And this being then established by two hundred and fourteen Bishops, was afterwards made a part of (*b*) the Decrees, or *Canon* Law, collected by *Gratian*, and published and authorized by Pope *Eugenius* the Third about 1150. and the Gloss upon that Canon interprets *tuitio* for *Aperture* or *Probate*. So also Pope (*c*) *Innocent* the Fourth understands it: *publicatio* (saith he) *fieri non debet apud Episcopum*; and he vouches that Law, (*d*) *Consulta ducalia tit. de Testament.* to prove it. *Speculator*, *Hostiensis* and others of the same time, and generally the rest that follow them, make the *Civil Law* only the square of the Jurisdiction of the *Probates*; and so it is truly affirmed in our Books, that the *Probate* belongs not to the Church (*e*) by the Spiritual Law; neither is any such thing given by any later (*f*) Bull, or Decretal from the Bishop of *Rome*.

(*a*) Cap. 18.
(*b*) Dist. de secular. negotiis, cap. 5.
(*c*) Ad c. nos quidem extra tit. de testament.
(*d*) Tit. de Instrum. edit. S. ostens. 34. vid. D. D. ad c. nos quidem, & c. si hæredes extra tit. de test. & Linwood de test. c. item S. infin. & cap. stat. S. approb.
(*e*) 2 R. 3. Test. 4. 14 H. 7. fo. 12. *b*.
(*f*) Quod discimus ex Bullarii summa quam edidit S. Guaranta.

CHAP. III.

The Extrinsecal Jurisdiction by the Civil Law, in whom.

FOr the *Extrinsecal* Jurisdiction that gave *Recoveries of Legacies*, by the Imperial Civil Law, where the Legacies were *in pios usus*, the (*a*) Bishop of the Diocess sometimes by himself, sometimes with the Civil Magistrate, provided for the execution of the Testators meaning: otherwise the Jurisdiction of Legacies, and what else falls under Testamentary disposition, was and (*b*) is the Magistrates only.

(*a*) C. de Episc. & Cler. l. 28. Nulli, & l. 49. si quis ad declinand. authentic. 135. c. 10. & vid. c. 11.
(*b*) ff. de Petit. hæred. & tit. de legat.

CHAP. IV.

In whom by the Canon Law.

BUt by the *Canon Law*, the general care of execution of Teſtaments is committed to the Biſhop: yet I find not any *Canon* to that purpoſe received into the Body of that Law, now in authority, before the time of the *Decretals*; which have out of ſome Council of *Mentz* theſe words, *viz.* (*a*) *Si hæredes juſſa Teſtatoris non impleverint, ab Epiſcopo loci illius omnis Res quæ eis relicta eſt Canonice interdicatur, cum fructibus & cæteris emolumentis, ut vota defuncti impleantur.* Out of what Council of *Mentz* this is taken, I have not yet learned; (*b*) but in the ſame ſyllables it occurrs in *Burchard*, that lived about ſix hundred years ſince, with the Marginal Note of *ex Concilio Moguntino.* What other Texts are, touching the power of the Canons over performance of Teſtaments, have reference to that courſe ordained by the Civil Law, where any thing was given *in pios uſus*, not to a general Juriſdiction; for ſo is the Canon *Nos quidem extr. tit. de teſtam.* Neither is that Canon *Ultima Voluntas* in *C.* 13. *q.* 2. taken out of S. *Gregory*, otherwiſe to be underſtood, if you interpret it as you ought by thoſe (*c*) places of *Gregory* whence it is taken: but the Canoniſts generally upon that Canon *Si hæredes*, take it, that *executio teſtamentorum ad Epiſcopos ſpectat.* And ſo thoſe old ones Pope *Innocent* the Fourth, *Bernard*, and others of the reſt deliver; and the (*d*) latter follow them, yet they commonly reſtrain it (and that in practice in other States) to Legacies given *in pios uſus.* And in the Council of *Trent*, where twice the Biſhops power over Teſtaments is provided for, (*e*) nothing is ſpoken of but Commutations of Legacies, and of ſuch as are given *in pios uſus*: yet from Ancient time both the *Intrinſecal* and *Extrinſecal* Juriſdiction of Teſtaments made of perſonal Chattels in *England*, hath been and is in the Church, except in places where ſpecial Cuſtom excludes it: the original whereof being not ſufficiently found in either of theſe Laws (the Civil and Canon) divers parts of which according to the various admiſſion of ſeveral Eſtates have been much diſperſed through *Chriſtendome*, and ſome remain now exercifed by *imitation* among us; It reſts, that diſquiſition be made for it in the Monuments of the Kingdom, that according as they together with the Canons afford light, ſome conjecture may be had touching the Antiquity and ground of it.

(*a*) Extr. de teſt. c. 6.

(*b*) Lib. 15. c. 34.

(*c*) Videſis Greg. lib. 3. Epiſt. 9. & lib. 9. Epiſt. 20.

(*d*) Vid. Gonzal. Zuarez Prax. Eccleſ. Lam. 2. Prælud. 2. Sect. 44. & Zerula prop. Epiſcop. verb. leg. ad quæſt. 9.

(*e*) Seſſ. 12. de reform. cap. 6. & Seſſ. ult. de reformat. c. 4.

CHAP.

CHAP. V.

Of the Intrinſecal Juriſdiction in the Saxons *time.*

THe Eldeſt Teſtament that I have ſeen made in *England*, is that of King *Edgar*'s time, made by (*a*) one *Birthric* a *Gentleman* or *Thane* (it ſeems) of great worth, and his Wife *Elſwith*; wherein they deviſe both Lands and Goods; and in the end of the Will ſayes her husband. And ic bidde for godes lufan minne leofan hlafordd þ he ne þafige þ ænig man uncepne cpide apende; *And I pray for Gods love my leefe Lord, that he doe not ſuffer that any man our Teſtament do break.*

(*a*) Lamb. Peramb. Cant. p. 548.

It may perhaps thence be collected, that the Protection or Execution of this Teſtament was within the Juriſdiction of the Lords Court, as alſo the Probate; and that eſpecially, becauſe divers *Lords* (*b*) *of Mannors* have to this day the Probate of Teſtaments by Cuſtom continued, againſt that which is otherwiſe regularly ſetled in the Church. But the ſame Teſtament being for Lands as well as for Goods, it may be that this Clauſe had reference to the Lord in regard of the Land only, (to the Alienation of which, his Aſſent might be requiſite) or to denote him for the Teſtators beſt friend, as one choſen Overſeer of his Will; and indeed he deſires all other good people to ſee his Will be not broken; which makes me only offer it, as what another mans fancy may work on: but I conceive not out of it enough to prove either way any thing touching the Juriſdiction of Teſtaments.

(*b*) Henſloes Caſe 9. Rep. *b.*

Nor in the *Saxon* times appears any thing that can ſufficiently direct us to know, how it was exerciſed here, unleſs out of that example of *Siwerth* of *Durham*'s Teſtament, in the (*c*) Book of *Ely*, you may collect, that the Probate was ſupply'd in the life-time of the Teſtator by Inrolment, or leaving an Indented Copy of it with the *Alderman* or *Sheriff* of the County, in whoſe *County-Court* the moſt of proceedings of Temporal Juſtice, and of the Spiritual alſo (for the Biſhop ſate with him, as in his Conſiſtory) were in the *Saxon* times: for ſo much perhaps may be conjectured out of it, as we faithfully here relate it. *Siwerth* in King *Edgar*'s time, lying ſick at *Lindane* in the *Iſle of Elie*, makes his Teſtament, and ſends for *Brithnorth* Abbot of *Elie*, and divers of the Monks, and others of the Gentry; and the Abbot writes the Teſtament *in tribus Chirographis, coram* (ſo are the words of the Book) *cunctis fecit recitari, lectumq; fecit incidi, unamque partem Chirographi retinuit Siferthus, Alteram autem dedit Abbati, tertiam vero miſit ſtatim per præfatum Brithelmum* (that was one of the Gentlemen of the Countrey then preſent) *Ailwino Aldermano, qui tunc temporis degebat in Elie, & petiit ab illo ut ſuum Teſtamentum ſtare concederet, quomodo Abbas illud ſcripſerat, & ordinaverat apud Lindane coram præditorum Teſtimonio virorum.*

(*c*) In Bibliothec. Cottoniana.

In lib. conceſſiſſet.

Cum itaque Ailwinus Alderman hoc audiſſet, & Chirographum vidiſſet, remiſit illico ad eum Winothum de Stowe cum Brithelmo, ſciſcitatuſque eſt

ab eo quid aut quomodo vellet de Teſtamento ſuo : qui mox per eoſdem renuntiavit ei, ſic ſuum Teſtamentum abſque omni contradictione vel mutatione ſe velle ſtare, ſicut præfatus Abbas illud in Chirographo poſuerat, quod ut Ailwinus Alderman audivit, totum conceſſit, ut ſtaret ſicut ipſe Siverthus Teſtatus erat. But in deed, in it Lands lying in *Durham* were deviſed to the Abbey; and ſo, it was not only of perſonal Chattels.

The *Saxon* Laws are very ſilent of any thing touching Teſtaments; and we muſt remember, while we think of that example of *Siverth* of *Durham*, that the Eccleſiaſtical and Temporal Courts of Common Juſtice, held as one by the Sheriff and Biſhop, were not ſevered as now, into the Conſiſtory, and County Court, until the *Conqueror* did it by a Law yet remaining and elſewhere publiſhed (*a*).

(*d*) V. Spicilegia in Eadmerum.

In what intercedes from this time, until about *H.* 2. I find not any Teſtimony that gives light to this purpoſe; as the *Saxon* Laws, ſo thoſe of the *Conquerour*, and of *H.* 1. and *H.* 2. mention nothing that taſts of either kind of Juriſdiction of Teſtaments; only of a Charter of *H.* 1. extant in *Matth. Paris*, and in the *Red Book* of the Exchequer this occurrs, *Si quis Baronum vel hominum meorum infirmabitur, ſicut ipſe dabit vel dare juſſerit pecuniam ſuam, ita datam eſſe concedo.* This may perhaps ſeem to denote, that the Kings Court determined of Legacies, eſpecially of the Kings Tenants.

But indeed it proves not ſo much. But the eldeſt paſſage that proves clear enough here, is that which makes the *Intrinſecal* Juriſdiction to have been in the Church, and the *Extrinſecal* in the Kings Court; I mean that which is found in the Treatiſe attributed to *Randall* of (*e*) *Glanvill* Chief Juſtice under *H.* 2. where he ſayes, that *if a Legacy be detained, the Executors or other friends of the Teſtator, were to get the Kings* Writ *to the Sheriff, commanding quod juſtè & ſine dilatione facias ſtare rationabilem diviſum*, (that is, the Bequeſt or Legacy) *N. ſicut rationabiliter monſtrari poterit quod eam fecerit, & quod ipſam ſtare debeat, &c.* And it is plain by the words there preceding and ſubſequent, that it hath reference to moveable or perſonal poſſeſſions, not to Lands, *&c.* So that it ſeems clear by that in *H.* 2. his time, the Juriſdiction of perſonal Legacies was in *Secular Courts*. But if the Iſſue in Secular Courts upon that Writ came to be, whether the Teſtament were true or no, or well made, or whether the thing demanded were *in facto* bequeathed, *Tum* (ſayes he) *placitum illud in Curia Chriſtianitatis audiri debet, & terminari, quia placitum de Teſtamentis coram Judice Eccleſiaſtico fieri debet, & per illorum qui Teſtamento interfuerint teſtimonia ſecundum juris ordinem terminari*: that is, as it muſt be underſtood, that upon iſſue of bequeathed or not bequeathed, of Teſtament made, or no Teſtament, the *Tryal* muſt have been otherwiſe than by the practice of the latter (*f*) Law, wherein the Teſtament is traverſable, and the Traverſe tryable in the Kings Court by *Certificate* to the Temporal Court from the Eccleſiaſtical, as at this day, of *Inſtitution*, *Baſtardy*, and *Profeſſion* in Religion, and the like: and thence may it be well concluded, that at this time by the practiſed Law, the Probate or the Intrinſecal Juriſdiction was in the Church; for as the *Inſtitution*,

(*e*) Lib. 7. cap. 6. & 7.

(*f*) 29 Ed. 3. 33. *a.* 44 Ed. 3. 16. *a.* Perk. 493. 22 H. 6. 52.

Baſtardy

Baſtardy and *Profeſſion* are to be certified, becauſe within the Biſhops Juriſdiction. Some recorded Teſtimonies remain of the firſt and third, and the nature of the Marriage or Cohabitation (that directs in the ſecond) is to be judged of only in the Spiritual Courts; ſo the *Validity of the Teſtament*, or the truth of this or that particular Legacy was to be certified from the Spiritual Court, becauſe the Probate had there proceeded, and the Copy there remaining was moſt authentick; otherwiſe to what purpoſe ſhould they have ſent to the Spiritual Court in ſuch a caſe?

But on the other ſide, as in the caſe of *Inſtitution*, *Profeſſion* and *Baſtardy*, the conſequence of them, which are objects of their Extrinſecal Juriſdiction, as *Deſcent*, *Excluſion* from Inheritance, gaining it by a deſcent caſt, or legal making a Church full, or the like are determinable only at the Common Law; ſo the conſequence of a Teſtament, that is, the Recoveries of Legacies, and ſuch like, as it ſeems by that Writ, were in the Temporal, not in the Spiritual Court. I know the authority of that Treatiſe is ſuſpected, and ſome of the beſt and ancienteſt Copies having the name of *E. de N.* which I have heard from diligent ſearchers in this kind of Learning, affirmed to have been ſometimes *E. de Narborough*, and not *R. de Glanvilla*, it hath been thought to be anothers Work, and alſo of later time. But, as on the one ſide, I dare not be confident, that it is *Glanvills*, ſo I make little queſtion, that it is as ancient as his time, if not his Work. The Teſts of the Precedents of Writs under his name, the language, eſpecially the name of *Juſtitia* alwayes for that which we now from ancient time call *Juſtitiarius*; and *Juſtitia* was ſo uſed in (*g*) Writers under *H.* 2. and the Law delivered in it taſteth not of any later Age. And howſoever it comes to paſs, the *Regiam Majeſtatem* of *Scotland* publiſhed by Command of *David* the Firſt under the time of our *Hen.* 1. hath for the moſt part the ſame ſyllables with this ſuppoſed *Glanvill*, and expreſly (*h*) the very paſſages and the Writ that we have now here noted for Teſtaments.

(*g*) Ita Jo. Salisburgenſis de Nugis Curial. lib. 5. cap. 15. & 16.

(*h*) Regiam Majeſtat. lib. 2. cap. 38.

That Extrinſecal Juriſdiction of thoſe times in the Secular Courts, was perhaps denoted by thoſe words in the Teſtament of *Theobald* Arch-Biſhop of *Canterbury* under King *Stephen*, (*i*) *Supremis* (ſaith he) *deficientium voluntatibus ſuum accommodant jura favorem*, where he deviſes only perſonal things and uſes. I think, *Jura* is rather to be taken for the Common Law, than the Spiritual; which is, in the moſt uſual phraſe of that time, deſigned by *Canones*.

(*i*) Jo. Sarisburg. Epiſt. 57.

In this time of *Hen.* 2. divers fierce Controverſies fell between the Law and Spiritual Juriſdiction, and the particulars of them are largely related at the end of *Quadrilogus*, in *Gervaſe* of *Dover*, in *Roger* of *Wendover*, in *John* of *Salisbury*, and *Matthew Paris*, but in him moſt abruptly; yet not the leaſt mention is in them touching any matter of this Juriſdiction; and in the main Caſes of our Spiritual Courts depending under *H.* 2. and ſent by appeal to *Rome*, which yet remain in the Epiſtles of *John* of *Salisbury*, there is not one that touches upon either of theſe Juriſdictions of Teſtaments in the Church; but indeed there is one that may ſeem ſomewhat to prove for that which

we note out of *Glanvill*, concerning the Intrinſecal Juriſdiction at that time in the Temporal Court: for in an Appeal ſent to Pope *Alexander* the Third, the Caſe, as *John* (*k*) of *Salisbury* relates it, was, that one *Richard de Aneſtia in foro ſecularium Judicum petitionem hæreditatis ad bona avunculi obtinenda inſtituit*, againſt *Mabile de Franckvilla*, being Daughter to *William* of *Sackvill*, to whom the Plaintiff was Nephew by his Siſter: and the point of the iſſue between the Daughter here and the Nephew, being upon the Baſtardy of the Daughter, the Spiritual Court had the Tryal of it. If (*bona*) here be underſtood for Chattells, as in our Law it is, and ſo reſtrained, then was this *petitio hæreditatis*, as a Suit for *Sackvill*'s Goods, grounded alſo, as it ſeems, upon a Teſtament of his: for in the relation of the Caſe alſo, *Richardus inſiſtebat*, ſayes the Author, *inſtitutioni Avunculi, petitionem hæreditatis inſtituens.*; and on the other ſide, *Mabile maxime Patris noviſſimæ voluntati innitebatur:* which ſhews, that here was a Teſtament in the Caſe, and a Suit for what was challenged by it in the Temporal Court: But *hæreditas* and *bona*, it is likely, included here (as by the Civil Law) all poſſeſſions of the Anceſtor, both real of Inheritance, and perſonal, that is, the *univerſum jus defuncti*, and not only our inheritance; although it doth alſo amongſt ſome (*l*) Civilians denote no more, if at leaſt they underſtand aright what they ſay, while they write, that *conſuetudo eſt in Anglia quâ primogenitus ſuccedit in omnibus bonis:* and in this Caſe, if the Iſſue had been upon the Truth of the Teſtament, as it was upon the Baſtardy, it had been referred alſo to the Spiritual Judges.

(*k*) Epiſt. 89.

(*l*) Barth. ad tit. de ſumma Tr. l. 1. num. 42.

CHAP.

CHAP. VI.

Whence Linwood *thinks the Juriſdiction Intrinſecal came to the Church.*

BY what is before delivered, it appears, that the *Intrinſecal Juriſdiction* or *Probate* was in the Church; and that by expreſs teſtimony, as anciently as the time of *H.* 2. and by all probability it was in ſetled uſe before that time, being ſpoken of in that Treatiſe called *Glanvill*'s, as a known courſe of proceeding: although indeed yet I could never ſee an expreſs Probate in any particular caſe, elder than about *H.* 3. But the beginning or courſe of this *Intrinſecal* Juriſdiction in the Church, is not for ought I have yet learned, extant: however *Fairefaxe* tells us, that it was by an Act of Parliament, which perhaps he took from that of *Linwood*; *Hæc libertas* (*Eccleſiæ*) *quoad approbationem hujuſmodi* (ſaith *Linwood*) *fundatur ſuper conſenſu Regio, & ſuorum Procerum* (*in talibus*) *ab antiquo, conceſſo.* Where he means by *in talibus*, their power of committing of Adminiſtration of Inteſtates goods, as it is plain by his quotation of that Conſtitution of Arch-Biſhop *Stafford tit. de immunitate Eccleſ. accidit, novitate perverſas quidam etiam:* That power was given, as I gueſs, by Parliament in King *John*'s time: but thereof more in due place. And *Linwood* addeth, *Item fundatur ſuper conſuetudine in ea parte de ſcientia Regum Angliæ, diutius conſervata:* Which is indeed, that it is founded upon the Common Law or Cuſtomary Law of the Kingdom; or that it hath like antiquity or original as other parts of the Common Law, that is, immemorial Cuſtom. For though it be exerciſed according to the Civil and Canon Law in the Spiritual Courts, with ſome reference had to the Cuſtoms of *England*; yet it is clear, that the power which the Spiritual Courts have to exerciſe it, is meerly by the Common Law; although we find not when it came firſt to them, no more than we find divers of our ſetled Courſes and Maxims in the Common Law; touching which yet we can without much difficulty prove, that at ſuch or ſuch times they were not in practice; as perhaps in the more ancient Ages, this was not in theſe Courts. But that it was originally belonging to the Crown, that is, to the *Temporal Courts*, which are all, and ever were derived from the Dignity Royal, is affirmed alſo, as in that cited in *Henſloe*'s Caſe, out of *Jocelin*'s Hiſtory of the Arch-biſhop of *Canterbury*, in a Writ (*a*) 2 *H.* 5. that prohibiteth the Arch-biſhop of *York* to call the Executors of the Tenants of S. *Leonard*'s Hoſpital to prove their Wills before him; becauſe as the words are, *placita de cognitionibus ſcriptorum in Regno noſtro Angl. ad Nos, Coronam & dignitatem noſtram ſpecialiter pertinent*: and alſo they had time out of mind uſed to prove them before the Maſters and Brothers of the Hoſpital. Here we ſee the *Teſtaments* reckoned as other *Evidences*, the Tryal and Conuſance whereof belongs only to the Temporal Courts: and at this day (*b*) by

2 R. 3. tit. Teſtam. 4.

Tit. de Teſt. C. ſtat. verb. Eccleſiæ libert.

(*a*) Cod. MS. Hoſp. S. Leonardi in Biblioth. Cottoniana.

Henſloes Caſe apud v. cl. Ed. Cook par. 9. fo. 37, 38, 48.

by ſpecial Cuſtom many Lords of Mannors have like *Probate* in their *Courts Baron*.

That in *France* Probates are in the Spiritual Courts.

By the way, for that which *Fairefaxe*, and others following him, tells us, that in all other Countries the *Probate* belongs to Lay-Judges, he is deceived, and deceives his Readers. Indeed, in the moſt places of other States it belongs to the Lay-Judges: but in *France* (*c*) generally the Spiritual Judges, both before *Fairefaxe* his time and ſince, had this Juriſdiction of *Probate*, and ſo have had without controverſie ever ſince the diſputations about it and other parts of Juriſdiction had with ſome Clergy-men, by *Coniers* Attorney General to *Philip Valois*, and *Peter Dreux* in behalf of the Duke of *Britain*, at ſuch time as the Clergy had there ſo extended their Juriſdiction, *Que les Fauxbourgs eſtoint trois fois plus grands que la ville*, as *Paſquire* ſpeaks of them.

(*c*) Choppin. de Dom. Franciæ lib. 2. pag. 230. Edit. 1588. & videſis teſtam. Leolodi Abbatis Floriani Helgundi initio.

CHAP.

CHAP. VII.

Testimonies of King John *and* Henry *the Third's time, that may serve to prove the Extrinsecal Jurisdiction then in the Temporal Courts.*

FOr the *Extrinsecal* Jurisdiction, as it seems by *Glanvill* and other Testimonies, that it was in the Kings Courts under *H.* 2. and so by all probability before: so out of other Records of following time, somewhat may perhaps be collected to prove, that it continued long in them, as out of the *Patent* of King *John* for *Oliver* of *Rochford's* Testament, *Sciatis* (sayes (*a*) the King) *Nos concessisse Testamentum Oliveri de Rupe forti sicut rationabiliter conditum est, & apud S. Florentiam veterem & Rupem fortem scriptum & ordinatum. Quare volumus & firmiter præcipimus quod nullus Executorum Testamenti ipsius impediat quin illud sicut rationabiliter conditum est faciant.* Then out of that of *Peter de Roches* Bishop of *Winchester*, and Chief Justice of *England*, touching the Will of *Adam* of *Gurdun*, *Rex* (*b*) *Dom. P. Winton. Episc. Justic. Angl. &c. Mandamus Vobis quod teneri facias Testamentum Adæ de Gurdun quod fecit de Rebus suis mobilibus & omnibus aliis in Angl. secundum dispositionem testamenti excepta terra quam de domino nostro habuit septimo Augusti. Teste meipso*: this expresly gives some legal execution of a Testament made of personal things unto the *Chief Justice* of *England*. And in (*c*) 5 *H.* 3. *Robert* of *Lexinton* having the possession of all the goods of *Philip de Uletot* the Testator, a *Writ* goes out to him to pay *William* Earl of *Salisbury* a debt of Ninety Marks out of them, and that the rest should be delivered to the Executors *ad faciendum Testamentum*; and another *Writ* was sent, that he should *per visum & Testimonium Execut.* sell all *Uletott's* goods, *& denarios quos inde fieri feceritis, salvo faciatis reponi sub sigillo vestro & sigillo Executor. prædict. donec aliud mandatum nostrum inde habueritis.* And in 7 *Hen.* 3. a *Writ* is directed to the Sheriff of *Lincoln*, (*d*) reciting, that whereas it appeared, that *Richard Fitz-dune* dyed not Intestate, *Ideo tibi præcipimus quod omnia Catalla ipsius Richardi in Manum nostram capta in ballivâ tua sine dilatione habere facias Priori de Noketon*, and other Executors of his Testament *ad faciendum inde rationabile testamentum*: and other like *Writs* occurr in the Rolls of King *John* and *H.* 3.

(*a*) Patent. 3. Reg. Johan. membr. 6.

(*b*) Rot. Claus. 16 Joh. Membr. 22.

(*c*) Claus. 5 H. 3. part. 2. m. 7. & 15.

(*d*) Claus. 7 H. 3. part. 1. membran. 16. idem id ipsum est quod habetur in commentario 9. v. c. Ed. Cookey. f. 38. 6. sumptum est.

CHAP.

CHAP. VIII.

Suits of Legacies perſonal in the Spiritual Court from the beginning of Henry *the Third, of the beginning of that Courſe.*

BUt however it may ſeem by thoſe Teſtimonies, that the Temporal Courts had ſome *Extrinſecal* Juriſdiction of Teſtaments in the time of King *John* and *Hen.* 3. it is clear, that in the beginning of *H.* 3. *Suits for Legacies* perſonal were in the Spiritual Courts, and that it ſeems from Cuſtome ſetled in practice of the former times that were then newly paſt. And perhaps it might be in the more ancient times *fori mixti*, and as well exerciſed in the one, as in the other Court; as we have elſewhere ſhewed of the more ancient Juriſdiction of Tithes; or it may be, that thoſe *Writs* in the former Chapter, and the like, were but in caſe of Tenants being Teſtators, upon whoſe deaths all their goods were to be ſeiſed by the Sheriff, or other ſuch Officer, and the debt (if any were) paid to the King, *Et reſiduum relinquebatur Executoribus teſtamenti defuncti*, as the words are, both of the Charters of King *John* and *H.* 3. (*a*) and perhaps by that Chapter of the Charter thoſe *Writs* may be interpreted, and *faciatis teneri teſtamentum* may be but only an *amoving* of the Kings hands from the goods, that ſo the Executor might perform the Teſtament; for that the Spiritual Court did from the beginning of *H.* 3. exerciſe a Juriſdiction for recovery of Legacies, is infallibly proved by (*b*) Caſes of 2, 4, 6, & 8 *Hen.* 3. and the Attachments upon Prohibitions extant in Records of that time, are, *quare ſecutus eſt placitum in Curia* (*c*) *Chriſtianitatis de Catallis quæ non ſunt de Teſtamento vel matrimonio:* and many ſuch more are both in the *Rolls* and in *Matth. Paris.* It appears alſo in 2 *H.* 3. in the Caſe of *Symon Fitz-Simon*, that even that Suit for deviſeable Land being deviſed, was thought to be good in the Spiritual Court *ex Cauſa teſtamentaria*, as if *Laicum feodum verſum eſſet in Catallum*, until the deviſee had recovered it: and after the recovery, *iterum incipiebat eſſe Laicum feodum*——as (*d*) *Bracton* ſayes, where his Printed Copy is exceedingly corrupted. But it was clear Law in the time of this *Bracton*, who was a Judge in the *Common Pleas* in the latter part of *H.* 3. that *locum* (*e*) *non habet probatio in Cauſa teſtamentaria ſi Catalla legentur & inde agatur in foro Eccleſiaſtico:* and he reckons that of Teſtaments *inter ſpiritualia, & ſpiritualibus annexa*, which agrees exactly in the known and practiſed Conſultations in the (*f*) Regiſter, *placita de Catallis & debitis, quæ ſunt de Teſtamento & Matrimonio, ad forum Eccleſiæ ſpecialiter dignoſcimus pertinere, &c.* And although in caſe of Legacy, as in caſe of Tithes, the Juriſdiction that gave the recovery of them, was ſometimes in the one, ſometimes in the other Court, before it was reſtrained to the Spiritual only, yet it ſeems by thoſe Caſes of *Henry* the Third's time, which are Teſtimonies beyond exceptions, that the Spiritual Juriſdiction over Legacies, was long before in practice; otherwiſe I gueſs that exception *de Teſtamento*, & *de Matrimonio*, had not been ſo familiar in the Prohibitions of that Age.

(*a*) Cap. 15. magn. Char. quam etiam donavit Johannes Rex, uti videre eſt apud Matth. Paris.

(*b*) 2 H. 3. tit. prohib. 13.
4 H. 3. ibidem. 28.
6 H. 3. ibid. 17.
8 H. 3. ibid. 19.

(*c*) Mich. 16 & 17 H. 3. Rot. 15. &c. & 18 H. 3. coram W. de Raleigh, &c. Rot. 36. in arce Londinenſi.

(*d*) Lib. 5. Tract. de exceptionibus, cap. 12. pag. 4091. *b.*

(*e*) Idem fo. 4076.

(*f*) Regiſter. Orig. fo. 48. (*b*) &c.

Age. And notwithſtanding thoſe Caſes out of the Records of King *John*'s and *Henry* the Third his time, the Temporal Court not only prohibited not the Spiritual Court, eſpecially in *Henry* the Third's time, but alſo had not any Conuſance of Suits for perſonal Legacies; for neither have I ever met with any Suit in that kind in the Plea Rolls of *H.* 3. or King *John*, or *Richard* 1. (but very few are extant of the time of the two laſt) neither doth *Bracton* admit any ſuch thing. And the Author of *Fleta* in the time of *E.* 1. tells us expreſly, (*g*) *de Cauſa Teſtamentaria ſicut nec de cauſa Matrimoniali Curia Regis ſe non intromittet.* But the beginning of that practice of the *Extrinſecal* Juriſdiction in the Spiritual Court, is even as difficult to find, as that other of *Probates*. *Linwood* tells us, that (*h*) *libertas quoad ſecundum ſcilicet, puniendum impedientes quo minus teſtamenta & ultimæ voluntates defunctorum procedant, ortum habet à privilegiis etiam in ea parte conceſſis, & à conſuetudine ſimiliter de ſcientia Regum Angl. diutius obſervata:* and further, *potuit* (ſaith he) *habere ortum* out of thoſe (*i*) Laws in the Code that made the Biſhop a Protector of Legacies *in pios uſus*. It might be alſo in regard of the purpoſe of thoſe Laws in themſelves; and it were no great wonder, that the Eccleſiaſtical Court might have gained Juriſdiction over all perſonal Legacies under colour of ſuch as were given *in pios uſus*: But perhaps it will not be admitted for probability enough, that any part of the Code being of the Imperial or Civil Law, was ever ſo received here in *England*, as that it could induce any alteration touching the Juriſdiction of the Crown, that is, touching this *Extrinſecal* Juriſdiction which (as is ſhewed) did belong to the Temporal Courts: but whoſoever will not admit of any ſuch conjecture, muſt yet remember, that preſently from King *Stephen*'s time, when the *Civil Law* was new born into the light, it having lain forgotten by the ſpace of Six Hundred years before in the *Weſtern Empire*, the Code and other parts of that Law were familiarly read by our *Engliſh* Lawyers; and I think as well by our Common as Canon Lawyers: to omit that Caſe of *Mabile of Franchiville*, wherein, it ſeems, a ſpecial regard was had to the Civil (*k*) Law, that permits not a meer Baſtard and Succeſſion *ex Teſtamento* againſt a lawful Heir of Blood; for otherwiſe how could *Richard* the Uncle's Inſtitution, as it ſeems by a former Will have made colour of right for him, againſt the latter Will which *Mabile* pretended, unleſs he relyed upon her being a Baſtard. But I ſhould think it probable enough, that the Original of this Juriſdiction for Legacies, was out of the *Canon Law*. And that eſpecially from that Canon *Si hæredes, &c.* before cited; for although the *Decretals*, wherein it ſtands now authorized for a general Law, were firſt publiſhed but in 24 *H.* 3. by *Gregory* the Ninth, and that we ſee by infallible teſtimony already brought, that Legacies before that time, were recoverable in the Spiritual Court, yet by likelihood that very Canon was inſerted in all or ſome of thoſe eight more ancient Compilations of the Canons authorized by ſome former Popes; (which is the more probable, becauſe we find it alſo in *Burchard*) and ſo it might be, long before ſufficient ground of this *Extrinſecal* Juriſdiction in the Ordinary; but I ſought here for Authority more than I durſt be bold in conjectures, which I leave to every mans judgement.

(*g*) Fleta lib. 2. cap. 57. Sect. Executor.

(*h*) Ad tit. de teſtam. c. Statut. verb. Eccleſiaſt. libertat.

(*i*) De Epiſc. & Cler. & nulli 28. & ſiquis ad deſignandum, 49, &c.

(*k*) Cod. de lib. Natur. l. 2. Matr. & Author. 89, &c.

PART II.

OF THE Diſpoſition or Adminiſtration OF Inteſtates Goods.

CHAP. I.

In whom it was in the time of the Saxons.

IN the *Saxons* time it was in the Lord of him that dyed (underſtand the Chief Lord) in caſe the Inteſtate were a Tenant, and dyed at home in peace: But in caſe he were no Tenant, or dyed in his Lords Army, then it was (it ſeems) as other Inheritance under the Juriſdiction of that Temporal Court within whoſe Territory the goods were: This may be proved out of the Laws of that time, which ordain, that upon the death of an Inteſtate, whom they call *ciale ape*, the Lord (*a*) is only to have the *Heriotts* due to him, which are alſo appointed by (*b*) the Laws of the ſame time, *That by his* (the Lords) *advice or judgement his* (the Inteſtates) *goods be divided among his Wife and Children and the next of Kin, according as to every one of them of right belongs*, that is, according to the nearneſs of Kindred, if no Children or Nephews from them be; for it muſt, I ſuppoſe, be underſtood, that the ſucceſſion was ſuch, that the Children excluded all their Kindred, and of their Kin-

(*a*) Canuti leg. cap. 68.

(*b*) Ejuſdem leg. cap. 68.

dred the next ſucceeded, according to that in *Tacitus* (*c*) of his *Germans*, whoſe Cuſtoms were doubtleſs mixt with our *Engliſh Saxons*, *hæredes*, ſayes he, *ſucceſſoreſque ſint cuique liberi, & nullum Teſtamentum.* But it ſeems, Chriſtianity afterward brought in the free power of making Teſtaments amongſt them, *Si liberi non ſunt, proximus gradus in poſſeſſione fratres, patrui, Avunculi.*

(*c*) De moribus Germanorum.

But this is expreſt only in caſe the Tenant dyed at home and in peace; for if he dyed in his (*d*) Lords Army, both the Heriott was forgiven, and the Inheritance both of Goods and Lands was to be divided *as it ought*, which was, it ſeems, by the Juriſdiction of the *Temporal Court* within whoſe Territory the Death or Goods were; for in that caſe, it is not ſaid, that the Lords Judgement was to be uſed, but that the Heirs ſhould divide all; or, as the words in the *Confeſſor*'s Law are, *habeant* (*e*) *hæredes ejus pecuniam & terram ejus ſine aliqua diminutione, & rectè dividant interſe*; where the right of the Heir both to Lands and Goods is expreſly deſigned, but the Judge that ſhould give it them, not mentioned. Therefore it ſeems, it remained as other parts of the Common Law, under the Temporal Juriſdiction, as by the (*f*) Civil Law it is under the Pretors.

(*d*) Canut. legibus, cap. 75.

(*e*) Leg. Ed. Confeſſ. cap. de heretochiis.

(*f*) F. S. Inſtit. de bonorum poſſeſſione.

CHAP.

CHAP. II.

In whom after the Normans *until King* John's *time.*

UNtil King *John*'s time it seems the Jurisdiction over *Intestates* Goods, was as of other Inheritance also, in the Temporal Courts: yet no sufficient Testimony is found to prove it expresly; only when the Common Laws of those times speak of *Intestates*, they determine the succession by like division as those of the *Saxon* times. In Laws attributed to *William* the First we read, *Si home moruſt ſans deviſe, ſi departent les Infants l'erite inter ſei per ovell.* And afterwards in *H.* 1. (*b*) Laws, *ſi quis Baronum vel hominum meorum præventus vel Armis vel infirmitate pecuniam ſuam nec dederit, nec dare diſpoſuerit, uxor ſua, ſive liberi, aut Parentes, & legitimi homines ſui pro anima ejus eam dividant, ſicut eis melius viſum fuerit.* Here is the *firſt mention*, as I remember, of any thing occurring in our Laws or Hiſtories, of the diſpoſition of the Inteſtates Goods, *pro anima ejus*, which indeed might have been fitly ſubjected to the view at leaſt of the Church. But no mention as yet being of any Eccleſiaſtical Power that tends that way, I rather think that heretofore no uſe or practice was of Adminiſtration committed, direction given, or medling with the Goods by the Ordinaries; but all was by the *Friends* or Kindred *juxta Conſilium diſcretorum virorum*, as the words are in (*c*) the Statutes made for ſuch as ſhould dye in the *Holy War* with *Richard* the Firſt.

(*a*) Adjiciuntur Ingulpho Crolandenſi MS. in Bibliotheca Cottoniana.

(*b*) Apud Matth. Paris.

(*c*) Will. Novoburg. hiſt. l. 3. c. 22.

Neither doth that of *Glanvill*, which was written under *H.* 2. tell us of any thing of the Ordinaries Power in this caſe, although it hath expreſs mention of *Teſtaments*, and the Churches Juriſdiction of them. Indeed we there find, that if no Executor be named, then (*d*) *poſſunt propinqui & conſanguinei Teſtatoris*, take upon them the Executorſhip, and ſue in the Kings Court againſt ſuch as hinder the due payment of Legacies; which alſo agrees well enough with that before cited out of the Laws of *H.* 1. Neither is there in *Gualter Mapes* his *Apocalypſis* (being a bitter Satyr againſt the Abuſes of the Spiritual Courts in *Henry* the Seconds time) nor in *John* of *Salisbury*'s Epiſtles, that have many particulars of the exerciſed Juriſdiction of the Church, any thing occurring, that touches upon any Eccleſiaſtical Powers of this nature.

(*d*) Glanvill. lib. 7. cap 6.

CHAP. III.

In whom after the time of King John.

But in that Charter of Liberties both for the Church and Laity made to the Baronage of *England* in the seventeenth of King *John* (a) in *Reningmead* an expres Ordinance is, *That if any Free-man dyed inteſtate, his Chattels were to be diſpoſed of by the hands of his next of kin, by the view of the Church*, that is, direction and advice being thereto given by the Ordinary, as I underſtand, *ſaving to all Creditors their debts*: the words of it were, *Si aliquis liber homo inteſtatus deceſſerit, Catalla ſua per manus propinquorum, parentum, & amicorum ſuorum, per viſum Eccleſiæ diſtribuantur; ſalvis unicuique debitis, quæ defunctus eis debebat.* That Charter of King *John* is almoſt the ſame ſyllables with the common one that we now uſe by the name of the *Grand Charter* of 9 *H.* 3. exemplified by the Kings Patent of 28 *E.* 1. But this of Inteſtates, and two or three other Chapters for the Subjects Liberty, are more in that of King *John*'s, than is found in the Exemplification of 28 *E.* 1. However *Matthew Paris* and *Roger* of *Wendover* when they ſpeak of *H.* 3. granting it, ſo refer their Readers to this of King *John*, that they tell us, that that of *H.* 3. was the ſelf ſame in every particular; and therefore omit the repetition of it. And indeed, although in the common Printed *Magna Charta* of *H.* 3. and in the Roll alſo of 28 *Ed.* 1. in the *Tower*, where the Exemplification is, this Ordinance touching *Inteſtates* be wanting, yet in very many of the ancienteſt Manuſcripts of the old Statutes, that of *H.* 3. hath the ſame words as we have here tranſcribed it from King *John*'s, and that in the ſame place of his Charter as that in King *John*'s; that is, between the eighteenth Chapter, *Si quis tenens, &c.* and the nineteenth, *Nullus Conſtabularius, &c.* And it is to be underſtood, that the greateſt Prelates of the Clergy of that time, as *Canterbury*, *London*, *Wincheſter*, *Pandulphus* the Popes *Nuncio*, the Maſter of the *Temple*, and divers other Biſhops were on the Kings part, when that of King *John* was granted. And it is probable enough, that when they ſaw that a Charter of Liberties muſt of neceſſity be granted to the *Baronage*, they ſo wrought alſo, that they might inſert this one for the advantage of their Epiſcopal Government. And they had good colour to think and perſwade, that ſome ſuch thing was fit for them, in regard it was now clearly taken, that ſome diſtribution was to be made *pro anima inteſtati*, the *care* of *ſouls* being the chiefeſt part of their common pretences for increaſe of their power and greatneſs. And hence I ſuppoſe, it ſoon came to paſs, that the next of kin had the power of diſpoſition committed by the Ordinaries, and that in Letters or otherwiſe by vertue of that *per viſum Eccleſiæ*, which was, I think, the textual ground of right of committing of Adminiſtration by the Clergy: This of King *John*'s being iterated in *Henry* the Thirds Charter (however omitted in the Exemplification) was it ſeems that proviſion ſpoken of in Cardinal *Othobon*'s *Legatins*, *Proinde ſuper bonis ab inteſtato decedentium*, (b) ſo are

(a) Reperiuntur ſeorſim ſæpius exemplaria illius diplomatis & penes Matth. Paris, Rogerum Wendover MS. & Thom. Rudburne MS. extant, ſed in Archivis non extant.

V. Manuſcriptum noſtr. de Magn. Charta, cap. 16. in fine.

(b) Cap. cum mortis incerta.

are the words, *proviſionem quæ olim à Prælatis Regni Angliæ cum approbatione Regis & Baronum dicitur emanaſſe, firmiter approbantes, diſtrictius inhibemus ne Prelati vel alii quicunque bona inteſtatorum quocunque modo recipiant, vel occupent contra proviſionem præmiſſam.* What *proviſion* is it more likely that this was, than that of the Grand Charter both of King *John* and *H.* 3. and the words *à Prælatis dicitur emanaſſe*, juſtifies what we have conjectured of the purpoſe of the Prelates, when they ſaw they could not but yield with the King, to an eſtabliſhment of Laws, by that Charter, made indeed in a Parliament of that age. The ſame I ſuppoſe that which is meant in the (*c*) Conſtitution of Arch-biſhop *Stafford*, where it is taken for granted, that the Churches power of diſpoſition of Inteſtates goods *pro ſalute animarum & in pios uſus*, was a thing *conſenſu Regio & magnatum Regni Angl. tanquam pro jure Eccleſiaſticâq; libertate ab olim ordinatum, &c.* Where *Linwood* modeſtly confeſſes, that he could not find in what Kings time this Ordinance was made. But *Johannes de Athona*, upon that of *Othobon*, though he rightly call that proviſion, *Proviſio Parliamentalis:* yet moſt ignorantly and ridiculouſly (*d*) tells us, *that the proviſion there underſtood, is the Statute of Weſtminſter*, 2. *Cap.* 21. *cum poſt mortem*, which he makes alſo to have I know not what reference to the Statute of *Gloceſter*. But this ſlipt from him either in a dream, or through the utmoſt neglect of thoſe infallible characters of truth, that the denoting of times affords us, for that *Legatia* of *Othobon* was made in *London* in (*e*) 53 *H.* 3. and at ſuch time as that *Proviſion* was yet extant in the *Magna Charta*, uſed by our Lawyers. But the Statutes of *Weſtminſter* the ſecond, and of *Gloceſter* were under *E.* 1. the one in the ſixth, the other in the thirteenth of him; how then could *Othobon* think of it in his Legatia, or could *John de Athona* have thought ſo, if he had allowed the Title of his Gloſs, which ſuppoſes in the point, that the Conſtitutions of *Othobon* were publiſhed in the year 1248. which had it been in 1268. had agreed with truth; but doubtleſs the Numeral Letters of MCCLXVIII were tranſpoſed into MCCXLVIII. and thence only that Error.

(*c*) Provinc. Conſtitut. tit. de immunitate Eccleſiæ, C. accidit novitate.

(*d*) Jo. de Athona ad Legat. Othobonum c. cum morth incerta.

(*e*) Præter Annales obvios, Linwood ad C. quia verb. Ottobonl, tit. de conſtitutionibus.

CHAP.

CHAP. IV.

How that ſo granted by King John's *Charter in Parliament hath continued in practice.*

AFter that Law of the ſeventeenth of K. *John*, it ſeems the *next of kin* diſpoſed of Inteſtates Goods by the teſtimony and direction of the Church; for ſo *per viſum* denotes, as we ſee in *per viſum proborum & legalium hominum* in Writs of Summons and the like: but I have not ſeen any practice of it teſtified in King *John*'s time. And under *H.* 3. however it were omitted in his Charter at the Exemplification, the ſame *viſus Eccleſiæ* continued; ſo ſayes *Bracton* that then lived, and was a Judge of that time, *Si* (*a*) *liber homo inteſtatus & ſubito deceſſerit, dominus ſuus nil intromittat de bonis defuncti, niſi de hoc tantum, quod ad ipſum pertineret,* (*ſc. quod habeat ſuum Heriott.*) *ſed ad Eccleſiam & amicos pertinebit executio bonorum.* Yet it ſeems alſo, that notwithſtanding the right of the Church thus ordained, and the ſucceſſion of next of kin ſo included in the Ordinance, both the Lords in ſome places, according to their former right, ſtill uſurp ſome power over the diſpoſition of Inteſtates Goods, againſt the will of the Ordinaries: and on the other ſide alſo, the Ordinaries, inſtead of giving direction for a true diſpoſition of ſuch Goods, get poſſeſſion of them, and commit them often, or at leaſt too great a part of them, to the uſe either of themſelves, or of the Church, and ſo *defrauded* thoſe to whom by the right of natural ſucceſſion they pertained. For that of the Lords, *Bracton* his noting it as a thing denyed them, compared with what we find among Articles granted in the Synod of *London* held under *Boniface* Arch-biſhop of *Canterbury* in 42 *H.* 3. proves it, *Idem quod mortuo* (ſo is the (*b*) Article) *laico ſine Teſtamento non capiantur bona ipſius in manus dominorum. Sed inde ſolvantur debita ipſius, & reſidua in uſus filiorum ſuorum, & proximorum indigentium pro ſalute animæ defuncti in pios uſus per Ordinarios committantur, niſi quatenus fuerit domino ſuo obligatus.* Here we ſee by the way plainly that the diſtribution *in pios uſus*, was the deviſing them among the next of kin, according to their nearneſs and want; not an imploying them to other uſes, at the Ordinaries arbitrary diſpoſition. But alſo that the Ordinary did in this Age ſometimes uſurp the Goods of Inteſtates againſt the next of kin, is enough proved out of that Legatine Conſtitution of *Othobon, cum mortis incerta, &c.* where it was ordained as you ſee before; ſo in the words of it, that they ſhould not diſpoſe of them otherwiſe than according as that Grant was in the *Grand Charter*; that is, to the benefit of the next of blood: But the Ordinaries had about this time, againſt the intent of that *Charter*, ſo abuſed the right of ſucceſſion, that it was related (*c*) for a conſtant truth, that the *Cuſtome in Britania* was, that *tertia pars bonorum decedentium ab inteſtato in opus Eccleſiæ & pauperum diſpenſanda, &c.* as *Innocent* the Fourth his words are, who lived and wrote in the time of *H.* 3. What other ground than the Ordinaries *ill dealing* with the next of blood was for that *tertia pars* I conceive not; unleſs the Pope had

(*a*) Bracton. lib. 2. de acq. rer. dom. cap. 26. ſect. 2.

(*b*) In Annal. Burtonenſis cœnobii penes v. cl. Thom. Allen Oxonienſem MS. A. 1257.

(*c*) Innocent. 4. tit. de Simonia, c. ad Apoſtolicum.

had ſome ſuch other Teſtimony touching it, as we find in an old Manuſcript Volume titled (*d*) *Statuta Synodorum* written in an hand of near ſeven hundred years ſince, being a Collection out of the Fathers and old Councils, made as it ſeems by ſome *Britain* or *Iriſh-man*, as we have elſewhere conjectured. In that *Statuta Synodorum* occurrs *Orig. in lib. de hæredibus: pater moriens det tertiam partem filiis, & tertiam Cæſari, & tertiam Eccleſiæ; ſi non habuerit Eccleſiam, det pauperibus, & ſi non habuerit Cæſarem nec Eccleſiam, dividat inter filios & pauperes.* But what Author this is cited out of, I am equally ignorant, as I know not at all who was the Author of the whole Collection, or whence he had many other of his Authorities. And other things that Volume hath out of ſome old Synod of *Ireland*, which makes to our preſent purpoſe, if the Canons of that Synod had been at all binding in this State. And it was no ſuch wonder, that ſome ſuch practice might be under *H.* 3. for ſince alſo in the time of *E.* 3. the Church *ſo uſurped* in their Juriſdiction of *Probates*, that they made the Executors wait on their Officials at uncertain and remote places, and then alſo put them, at times, to the Ranſom of the fourth or fifth part of the Teſtators Goods, before they would give them *Probate*; which was complained (*e*) of in Parliament amongſt the Grievances of the Commons.

(*d*) MS in Theſauro Cottoniano c. 31. de diviſione hæreditatis.

(*e*) Parl. 21 E. 3. Cro. Hill. art. 51. & conſule ſi vis Parl. octab. Purif. 23 E. 3. art. 35. *in Archivis.*

CHAP.

CHAP. V.

Of that of bona Inteſtatorum in manus Domini Regis capi ſolebant.

FOr that of *bona Inteſtatorum in manus Domini Regis capi ſolebant*, for which is cited (*b*) the Cloſe Roll of 7 *H.* 3. *Rot.* 16. it is alſo moſt true, if rightly apprehended. All that appears in the Record is, that the King wrote to the Sheriff of *Lincoln*, that *conſtat nobis per inquiſitionem nobis miſſam ſub ſigillo Stephani de Segrave, & aliorum proborum & legalium hominum, quod Richardus filius Dunæ non obiit inteſtatus*, and therefore he commands, that the Sheriff ſhould deliver all the Goods of the ſaid *Fitz-dune in manus noſtras capta*, to the Prior of *Loketon*, and others his Executors, *ad faciendum Teſtamentum:* neither are there any words that tell us of any *capi ſolebant*, or that theſe were taken in regard of dying inteſtate only. Indeed it appears not ſufficiently in the Writ, why they were taken; but it is moſt probable, that the *ſeiſure* was for ſome debt due to the Crown from the Inteſtate, which afterward not appearing, or being ſatisfied, or it appearing that the Executors by the taking upon them the execution of the Teſtament, would ſubject themſelves to the payment of it, it was fit enough to amove the Kings hands, and deliver all over to the Executors: He that well conſiders the Statute of *Magna Charta cap.* 18. *Si quis tenens*, and compares it with that of *Bracton*, where he tells us, that the Law was clear, that *if any man dyed indebted to the King, the Sheriff might* (*b*) *imbreviare, & attachiare cattalla defuncti*, will ſoon ſee the probability of this, howſoever the words of the Statute are only of the Kings Tenants: And it concludes alſo, as if it were only in caſe of the death of a Teſtator in regard of *relinquatur executoribus ad faciendum teſtamentum defuncti*; but plainly, that *ad faciendum, &c.* hath equal reference to the Inteſtates as to Teſtators: for no name of an *Adminiſtrator* being then uſually known, all were called *Executors* that medled with the *Inteſtates* Goods; and thoſe Executors were *executores qui faciebant Teſtamentum*, that is, which inſtead of the Inteſtate (*c*) did take ſuch order after his death with his Goods, as they thought he would have done if he had made a Teſtament; which may be conceived alſo out of the uſe remembred in that time, wherein ſick men being unable, neither having time to expreſs their meaning, choſe out ſome friends that might be *ſuper* (*d*) *hoc expreſſores & executores*; which friends appointing of Legacies (as if the Inteſtate had given them) and making diſpoſition of Inteſtates Goods, were as Teſtaments of thoſe Inteſtates; and they did truly as Executors *facere Teſtamentum defuncti*, in which ſenſe it might be ſpoken of any Executors or Adminiſtrators that intermedled in thoſe times. And many Writs occurr in the Cloſe Roll of King *John* and *H.* 3. that have expreſly in them the *amoving* of the Kings hands from the Goods of the dead, when the ſeiſure had been only for the debts to the Crown, according to the Statute of *Magna Charta* (which in ſubſtance is the Law at this day) and *Bracton*, by reaſon whereof, I ſee not cauſe enough, why

(*a*) Henſloes Caſe apud v. cl. Ed. Coke part 9. ſect. 39, 40.

(*b*) Bracton. lib. 2. de acq. rerum dom. cap. 26. ſect. 2.

(*c*) Ita facere teſtamentum nomine defuncti ſumitur apud Canonici juris peritos. videſis Zebulam prax. Epiſcop. verb. legatum, ſect. 8.

(*d*) Mos iſte reperitur apud Matth. Paris, hiſtor. major, pag. 982. Ubi de Pontificia conſtitutione de inteſtatis edit. Londinenſ.

why we ſhould underſtand that of 7 *H.* 3. to prove any ſuch thing, as a Cuſtom of the Kings diſpoſing or ſeiſing of the Inteſtates Goods, eſpecially in regard that in the paſſages of the Law, Lawyers and Records of that time, no mention is of any thing that affirms it to be a Cuſtom, or touches it as a common uſe.

But admit that in *Fitz-dunes* Caſe it had been ſo, that the taking of the Goods into the Kings hand, had been becauſe of his dying *Inteſtate* only. It may therefore be accounted rather as a particular of the irregular practice of that time, than any example to prove a Cuſtom; and whoſoever is but acquainted with the courſe of the Records of King *John* and *Henry* the Third his time, muſt ſoon ſee Writs enough that agree not ſo much as with any ſetled courſe of Law, but taſte rather of ſome ſudden or arbitrary courſe of granting them. Indeed ſome two years before that of *Fitz-dune*, there is an example in *Bedfordſhire*, that might ſeem more fully to prove what is collected out of the other: the Writ is thus, *Rex* (*e*) *Vicecom. Bedford ſalutem. Præcipimus tibi quod blada & catalla quæ fuerunt Roberti de Inſula & Roſſiæ uxoris ejus defunct. in Wahall & Brokeberge areſtari facias & ſalvo cuſtodiri, donec diſcuſſum fuerit in curia noſtra ad quem catalla illa pertineant, & aliud inde præcipimus*; but this is often enough ſeconded with other examples that have for the moſt part a mention of the Defuncts debts to the Crown, that it cannot otherwiſe be underſtood, but either as founded upon that Law of ſeiſing upon the Goods for debt to the Crown by Prerogative, or as an example (amongſt many of other kinds) that diſcovers a more arbitrary courſe ſometimes in proceeding, than later time hath permitted. And according to one of thoſe wayes (but the firſt that is upon the Statute of the *Grand Charter* is the fitteſt and moſt probable) muſt that alſo be interpreted, where (*f*) *H.* 3. ſends a Writ to the Sheriff of *Rutland* to *command him, that notwithſtanding that* Robert de Weſton *a Pariſhioner of* Weſton *were drowned, and dyed inteſtate*, he ſhould yet *facere Willielmo de S. Lando* (that is, to the Parſon of the Pariſh) *habere nomine Eccleſiæ ſuæ id quod ad eum pertinet, habendum de catallis quæ fuerunt prædicti Roberti, ſecundum conſuetudines partium illarum*: that was for the *mortuarie*, which properly and under that name then was determinable in the Spiritual Court.

(*e*) Clauſ. 5 H. 3. par. 2. memb. 3.

(*f*) Clauſ. 17 H. 3. memb. 8.

But ſurely we muſt conclude, that if there were any ſuch practice by the Officers of the Crown in the time of *Hen.* 3. to ſeiſe *Inteſtates* goods generally, it was not ſo much the Law of the time; for if ſo, the Records could not be but as full of examples of it, as the time was of the death of Inteſtates, which queſtionleſs were very many; but ſome ſuch temporary uſurpation, as in 31 *H.* 3. Pope *Innocent* the Fourth here had for a while executed by his Miniſters the *Franciſcans* and *Dominicans*, in not only getting into his own hands, but alſo to his own uſe, all the *Goods of the Clergy-men* that dyed *Inteſtate* through *England*, which as *Matthew Paris* that then lived, relates it, *cum audiſſet dominus Rex, deteſtans Romanæ Curiæ augmentoſam & multiplicem avaritiam, hoc fieri prohibuit, comperiens illud ad damnum Regni & ſuum redundare præjudicium.* Afterward in the time of *Edw.* 1. it appears by the Statute of *Weſtm.* 2. *cap.* 21. *cum poſt mortem, &c.* that the

(*g*) Matth. Paris, fo. 959. Edit. Londinenſ.

the Goods of *Inteſtates* did come *ad Ordinarios diſponenda*; which agrees with that of *Bracton* before cited, and iterated in the ſame ſyllables in *Fleta* (*b*) which was written under *E.* 1. And the diſpoſition of *Inteſtates* Goods was enquired after in thoſe dayes (*i*) amongſt Articles of Eccleſiaſtical Juriſdiction. And afterwards by the Statute of 31 *E.* 3. the Ordinary was compelled to commit the adminiſtration of Inteſtates Goods to the next of kin: after which Statute the name of *Adminiſtrator* was common as their Office; and by that name ſuch to whom the Ordinary committed were ſued, although before that time they were ſuable by the name of *Executors*, and perhaps alſo by the name of *Adminiſtrators*: (*k*) but that name is ſcarce found (as I think not at all) given a Defendant to an Action brought before ſeven years after the Statute of 31 *E.* 3. And in the Parliament Rolls of 17 *Ed.* 3. the *Adminiſtrators* are deſigned only by the *Ceux que ſont per l'Eveſque ordines en lieu des Executors*, where a Petition is offered (*l*) by the Commons, that ſuch might have the like Actions as their *Inteſtates*: but the King anſwers, *Quant à ceux qui devient inteſtate le Roy voet que l'Eveſque eit action en tien caſe depuis que il doit reſponder as autres.* But from that of 31 *E.* 3. ſaving only the alteration by 21 *H.* 8. the Law hath continued uniformly to this day.

(*b*) Fleta l. 2. c. 57.

(*i*) Quod videre eſt in Cro. Wigorn. Eccleſiæ in Biblioth. Cott. ſub initio E. 1.

28 E. 3. fo. 21. *a.*

(*k*) Videſis 25 E. 3. fo. 54. *a.* ſed & plura in l. 9. Vir. cl. E. Cook par. 5. fo. 82. & par. 9. f. 39. & 40. & 19 Ed. 3. tit. Covenant. 24.

(*l*) Quindena Paſch. 17 E. 3. Artic. 49.

FINIS.